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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 368.

MARY MABEL ROGERS, APPELLANT,

vs.

HENRY H. PECK AND WILSON S. LOVELL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF VERMONT.

FILED AUGUST 7, 1905.

(19870.)

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1 United States District Court, District of Vermont.

In re Mary Mabel Rogers, habeas corpus.

Be it remembered: That on the 21st day of June, A. D. 1905, Mary Mabel Rogers, of Hoosick, in the county of Rensselaer and State of New York, filed her petition in said court, praying therein that a writ of habeas corpus might issue to bring her said body before the Honorable Hoyt H. Wheeler, judge of the District Court of the United States, within and for the district of Vermont, upon which said petition a writ of habeas corpus was issued, as prayed for, on the 19th day of June, A. D. 1905; which said petition and writ of habeas corpus, with the officer's return thereon, are in the words and figures following:

2 *To the honorable District Court of the United States in and for the District of Vermont, and to Honorable Hoyt H. Wheeler, judge of the said District Court:*

Your petitioner, Mary Mabel Rogers, of Hoosick, in the county of Rensselaer and State of New York, respectfully shows to your honor and to your honorable court, that she is now a prisoner confined in the State prison at Windsor, in the county of Windsor, and State of Vermont, in the custody of Henry H. Peck, sheriff of said county of Windsor, and of Wilson S. Lovell, superintendent of the State prison aforesaid, for an alleged criminal offence, to wit, the crime of murder in the first degree.

Your petitioner shows that her said confinement is by virtue of three certain warrants, copies whereof are in the possession of the said sheriff and said superintendent of said prison, of none of which said warrants your petitioner now has any copy, nor has she ever been served with nor had any copy.

But your petitioner avers, to the best of her knowledge and belief, that she is not committed nor detained by virtue of any process of law known to the courts of the United States, or the several States, but that she is now detained in violation of the Constitution of the United States, in violation of the laws of the United States; and in violation of the constitution and laws of the State of Vermont; and that she is not held in confinement by virtue of any final judgment and decree of any competent court or tribunal of criminal jurisdiction, or by virtue of any process issued upon said judgment or decree, but is held without due process of law.

And your petitioner avers that at the time of her said arrest she was a citizen and resident of the State of New York, and that she was arrested in the town of Bennington in the county of Bennington, on or about
3 the 14th day of August A. D. 1902, and that she was tried in the County Court, within and for the county Bennington, in the State of Vermont, at a term thereof holden in Bennington aforesaid, in December, 1903, upon an indictment found by the grand jury of said county of Bennington at a term of said County Court holden in June, A. D. 1903, which said indictment charged her with the crime of murder in the first degree; and that upon said trial at said term a verdict and judgment that your petitioner was guilty as charged in said indictment, and your petitioner was thereupon then and there by said court sentenced to be hanged by the neck until dead, and it was then and there ordered that said sentence be executed on the first Friday in February, A. D. 1905.

And your petitioner avers that on and after the said first Friday in February, A. D. 1905, she was detained by the said petitionees by virtue of a certain pretended order and warrant issued by Charles J. Bell as governor of the State of Vermont, and which commanded the said petitionee, Henry H. Peck, to hang and kill your petitioner on the second day of June, A. D. 1905; and since said last-named date she has been and is now held and restrained by the petitionees by virtue of another certain pretended warrant, issued by said governor of Vermont, and not upon the request or with the knowledge of your petitioner, and which commands the said sheriff to hang and kill your petitioner on the 23rd day of June, A. D. 1905; that neither of said pretended warrants or orders is issued by any court of competent jurisdiction under the laws of Vermont or under the laws of the United States, and neither of said pretended warrants is authorized by any statute or law, or by the Constitution of either the State of Vermont or of the United States.

4 Your petitioner further avers that said petitionee's are now restraining her of her liberty and threaten to and intend to deprive her of her life on the 23rd day of June, A. D. 1905, solely by virtue of said pretended warrants, and that in so doing the petitionees are depriving your petitioner of life and liberty without due process of law, and depriving your petitioner of the rights and privileges protection guaranteed to her by the Constitution of the United States.

Your petitioner further avers that, under and by virtue of chapter 98 of the Vermont Statutes and prior to the second day of June, A. D. 1905, she did bring her petition for a new trial and did present said petition to two judges of the Supreme Court of the State of Vermont, who upon examination thereof did allow the same to be filed; but said judges did not make at that time or at any other time any order staying the execution of said sentence until after the time fixed for hearing the petition by the said Supreme Court of Vermont.

Your petitioner further avers that her said petition was duly heard and considered by the Supreme Court of Vermont, and said court did refuse a new trial and did dismiss said petition; but said Supreme Court did not then nor hath it ever appointed a time for executing said sentence and has never issued its warrant to the sheriff of Windsor County for that purpose, as required by said chapter 98. Your petitioner insists that she had the right to be heard as to the day when said sentence was to be executed, which right has been denied her; wherefore she now insists that she is being deprived of her liberty and is threatened with death without due process of law as contemplated by the Constitution of the United States.

Your petitioner avers that she is unable to procure at this time
5 copies of said pretended warrants, but prays that the same may be made a part of this petition and thereto attached when they can be procured.

And your petitioner further shows that the said County Court in and for the county of Bennington, in which she was convicted as aforesaid, is a court of inferior jurisdiction and not one authorized by law to try and finally determine questions of law arising upon trials therein, and that after her said trial, on or about the 20th day of January, A. D. 1904, said court adjourned without day.

That the provision of the law of the State of Vermont relative to the passing of causes to the Supreme Court from County Courts for the decision and determination of questions of law is as follows:

Sec. 1961. "Questions of law decided by the County Court, arising upon demurrer, trial by jury, or motion in arrest, in a prosecution by indictment or information for a crime or misdemeanor, shall, after a verdict of guilty is returned, upon motion of the respondent, be allowed and placed upon the record; and the same shall thereupon pass to the Supreme Court for final decision."

And by the law of Vermont it is further provided as follows:

Sec. 1965. "No writ of error shall be allowed in a criminal cause prosecuted by complaint, information, or indictment."

And your petitioner shows that no other or different provision was or is made by the law of the State of Vermont for the review, settlement, and determination by the Supreme Court of questions of law raised in the County Courts than the provision of section 1961 aforesaid.

And your petitioner avers that at said trial in the Bennington County Court the principal witness against her was one Leon Perham, and that he was the only witness who, in his testimony, gave evidence directly tending to show that your petitioner committed said crime; that upon said trial said Perham refused to submit to cross-examination, and by reason of such refusal he was not cross-examined, as fully
6 appears by the transcript of the testimony made by the official reporter of said court, and notwithstanding his said refusal his testimony was, by said court, submitted to the jury without any limitation or instruction from said court on account of said refusal and lack of cross-examination.

And your petitioner avers that she was without experience, ignorant of her rights in that behalf, unable to understand the same, and that by reason of her lack of mental capacity and understanding she did not, up to and at the time of the adjournment of said court aforesaid, know or understand that said proceeding of said County Court was unlawful and in derogation of her rights under the Constitution of the United States.

Your petitioner further shows that she is being deprived of her life and liberty without due process of law; and her rights, privileges, and immunities are being, and are abridged, by the laws of the State of Vermont, in violation of the Constitution of the United States, in that she is about to be executed by the order of the governor of said State upon a pretended warrant fixing the time of execution without authority of law, and without giving your petitioner an opportunity to be heard thereon or to be confronted with the witnesses against her.

That the said sheriff and superintendent claim to be acting by virtue of said warrant fixing the time to carry out the sentence of the County Court of the county of Bennington on a judgment of said court rendered at the December term, A. D. 1903, in which the execution of the petitioner was fixed on the 3d day of February, A. D. 1905; which said war-
7 rant is void for that it has expired and the time of execution has already elapsed; that said County Court is an inferior court, without jurisdiction to finally determine questions of law raised on said trial, and no other court or tribunal is established or provided by law as required by the Constitution in said county where the petitioner may be heard upon such questions or in respect thereto.

That the County Court, by sec. 1010, has original jurisdiction of prosecution of criminal offences within the respective counties. The Supreme Court is the appellate court, and by sec. 993 has jurisdiction to try and determine questions of law removed from the County Court pursuant to law. The constitution of Vermont, by sec. 4, of Chap. II, provides that courts of justice shall be maintained in every county in this State. The legislature has provided no court of justice for trial of questions of law removed from the County Court, in said county of Bennington, and although by sec. 1961 it is provided that questions of law decided by the County Court may, on motion, be allowed, and pass to the Supreme Court, the legislature has enacted by sec. 1965 that no writ of error shall be allowed in a criminal cause prosecuted by indictment, and that Supreme Court shall be held at Montpelier without said county; that each County Court ceases to exist on adjournment, and said County Court has adjourned and the petitioner is prevented by said laws from a review of the record and a complete trial under the Constitution.

And the petitioner by the acts of the legislature aforesaid, and by the failure to provide a Supreme Court or some other suitable competent tribunal in the county of Bennington before which questions of law raised in said County Court, and the nature of the judgment and sentence, in a manner suited to the nature of the case and the punishment imposed, can be heard, has been and is deprived of the privileges secured by the Constitution of the United States, and of her liberty and life without due process of law.

8 And your petitioner further shows that the Supreme Court of the State of Vermont is bound by said statute, sec. 1965, and that said court being the court of last resort and for the ultimate determination of questions of law, can not and will not entertain a writ of error in any criminal cause, and therefore this petitioner is wholly unable to procure any writ of error or any other process by which the appellate court of said State can review and decide upon the question of whether said Bennington County Court erred in the conduct of her said trial, although as your petitioner is advised and believes, said court did err in the respect above set forth, and that the means whereby your petitioner might, of right, have procured a determination of said question by the court of last resort in said State of Vermont has been taken away by said statute, sec. 1965. That the right to have and procure such determination in a capital or other criminal case is one which existed and was of general and common right at the time of the adoption of the Constitution of the United States, and is guaranteed and conferred by said Constitution, and that said statute of Vermont, sec. 1965, abrogates said right and is in conflict with said Constitution of the United States, and that the proceedings against your petitioner, in view of said statute, are not due process of law.

Wherefore your petitioner prays a writ of habeas corpus to the end that she may be discharged from custody and may be allowed to depart from said unlawful imprisonment and detention aforesaid, and for a writ of certiorari to bring up the record of said cause.

Dated at Windsor, in the County of Windsor, this 19th day of June, A. D. 1905.

MARY MABEL ROGERS.

9 STATE OF VERMONT,
Windsor County, ss:

At Windsor, in said county, this 19th day of June, A. D. 1905, personally appeared the said Mary Rogers, and made oath that she has heard read the foregoing petition by her subscribed, and that the facts stated therein are true, and that as to the facts on information and belief she believes them to be true.

Before me, EDWARD B. FLINN,
Notary Public.

F. M. BUTLER,
T. W. MOLONEY,
E. B. FLINN,
Attorneys.

President of the United States of America, to Henry H. Peck and Wilson S. Lovell, or to ————:

You are hereby commanded that you have the body of Mary Mabel Rogers, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatever name said Mary Mabel Rogers shall be called or charged, forthwith before me at the court-house in Windsor, to do and receive what shall then and there be considered concerning the said Mary Mabel Rogers, and have you there this writ.

Witness the Hon. Hoyt H. Wheeler, judge of said court, the 19th day of June, A. D. 1905.

HOYT H. WHEELER, *Judge.*

———— ————,
Attorneys.

Let the writ issue.

10 UNITED STATES OF AMERICA,
District of Vermont, ss:

At Windsor, in said district, on this the 20th day of June, A. D. 1905, I made service of the within petition and summons on the within-named Wilson S. Lovell, supt. of the Vermont State prison, by delivering into his hands a true and attested copy hereof, with my return hereon thereon endorsed.

Attest:

HORACE W. BAILEY,
U. S. Marshal.

UNITED STATES OF AMERICA,
District of Vermont, ss:

At Windsor, in said district, on this day of June, A. D. 1905, I made service of the within petition and summons on the within-named Henry H. Peck, by delivering into his hands a true and attested copy hereof with my return hereon thereon endorsed.

Attest:

HORACE W. BAILEY,
U. S. Marshal.

(Endorsed:) Filed June 21st, 1905. Geo. E. Johnson, clerk.

And on the same 21st day of June, A. D. 1905, the returns of Henry H. Peck and Wilson S. Lovell to said writ of habeas corpus were filed in said cause, which said returns are in the words and figures following:

11 *To Honorable Hoyt H. Wheeler, judge of the District Court of the United States, in and for the District of Vermont:*

Henry H. Peck, of Hartford, in the county of Windsor and State of Vermont, makes this his return to the writ of habeas corpus to him directed, issued by your honor on the 19th day of June, 1905, wherein and by said writ he, the said Peck, is commanded to have the body of Mary Mabel Rogers, by him imprisoned and detained, as it is said, together with the time and cause of said imprisonment and detention before your honor forthwith, at the court-house in Windsor in the said County of Windsor, to do and receive what shall then and there be considered concerning the said Mary Mabel Rogers, and thereupon says:

That he has not in his custody and control and has not now and never has imprisoned or detained the said Mary Mabel Rogers; that the said Mary Mabel Rogers is now imprisoned and detained in the State prison of the State of Vermont, at said Windsor, under and by virtue of the mittimus issued by the honorable County Court, within and for the county of Bennington and State of Vermont, on the first day of January, 1904, she, the said Mary Mabel Rogers, having been committed to said prison on the second day of January, 1904, there to be confined and kept according to the laws of the State of Vermont, to await the execution by the hand of the sheriff of the county of Windsor and State of Vermont, all as recited in the warrant to said sheriff directed, hereinafter referred to.

That your respondent is now and has been since December 1, 1904, the sheriff of the county of Windsor and State of Vermont, duly elected and qualified as such under and by virtue of the constitution and

12 laws of the State of Vermont.

That on the second day of January, 1905, there was issued by the honorable County Court, within and for the county of Bennington, under the seal of said court and attested by the clerk of said court, a warrant directed to your respondent, as said sheriff of said county of Windsor, a copy of which warrant is annexed to and made a part of this return.

That on the second day of February, 1905, at Montpelier, in the county of Washington and State of Vermont, there was issued by the Honorable Charles J. Bell, governor of the State of Vermont, under and by virtue of the power and authority vested in the governor of the State of Vermont by the constitution of the State of Vermont, a warrant directed to the sheriff of the said county of Windsor and State of Vermont, granting unto the said Mary Mabel Rogers a reprieve of and from the sentence of death of said court, as set forth and commanded in said warrant, to and until the second day of June, 1905, to and until between the hours of one and two o'clock in the afternoon of said second day of June, 1905, all as appears in the copy of said warrant of reprieve which is annexed to and made a part of this return, and which said warrant of reprieve was duly delivered to your respondent on said second day of February, 1905; that on the first day of June, 1905, at said Montpelier, there was issued by the Honorable Charles J. Bell, governor of the State of Vermont, under

and by virtue of the power and authority vested in the governor of the State of Vermont by the constitution of the State of Vermont, a warrant directed to the sheriff of the said county of Windsor, granting unto the said Mary Mabel Rogers a further reprieve from the said sentence of death to and until the 23d day of June, 1905, to and until between the hours of one and two o'clock in the afternoon of said 23d day of June, 1905, which said warrant of reprieve was on said first day of June, 1905, duly delivered to your respondent as the sheriff of the county of said Windsor, and a copy of which said warrant of reprieve is annexed
13 to and made a part of this return.

And your respondent here has no personal knowledge as to the manner in which the relator has been confined in said prison since November 2nd, 1904, except that he, your respondent here, has visited her in said prison on four different occasions before the commencement of this proceeding, but that your respondent here has heard read the statement of Respondent Lovell, made in his return to this writ, and understands and believes the statement of facts therein contained as to the manner and place of confinement of the relator and character and frequency of visits to her is substantially correct.

That your respondent plans and purposes on said 23d day of June, 1905, between the hours of one and two o'clock in the afternoon of said day, unless before that time there shall issue to him from some court of competent authority or from the governor of the State of Vermont, a reprieve, stay, supersedeas, order, mandate, or decree directing him to the contrary, to execute and carry out upon the body of the said Mary Mabel Rogers the sentence of death of the said Bennington County Court, as recited and set forth in said warrant, and as commanded in said last-named reprieve, all according to the laws of the State of Vermont.

And that except under and by virtue of the said warrant from said Bennington County Court and said warrants of reprieve from the governor of the State of Vermont, he, your respondent, has no plan nor purpose to interfere with the body of the said Mary M. Rogers, nor to exercise any custody or control over her, the said Mary M. Rogers.

Dated June 21, 1905.

Attest:

HENRY H. PECK.

DISTRICT OF VERMONT, *ss:*

At Brattleboro, in said district, this 21st day of June, 1905, personally appeared Henry H. Peck and made oath that the foregoing return subscribed by him is true.
14 Before me,

GEO. E. JOHNSON,
Clerk U. S. District Court, Dist. Vt.

STATE OF VERMONT,
Bennington County, ss:

To HENRY H. PECK, Esquire, *sheriff of the county of Windsor, in the State of Vermont, the honorable the County Court within and for the county of Bennington aforesaid sends greeting:*

Whereas, Mary M. Rogers, of Bennington, in the county of Bennington and State of Vermont, by the consideration and judgment of the

honorable the County Court, begun and held at Bennington, within and for said county of Bennington, on the first Tuesday of December, in the year of our Lord one thousand nine hundred and three, was duly convicted of the crime of murder in the first degree, and was then and there sentenced by said court in session in the following words; that is to say:

"The sentence of the court is that you, the said Mary M. Rogers, on the first Friday of February, 1905, between the hours of one and two o'clock in the afternoon of said day, within the walls or enclosed yard of the State prison in Windsor, in the county of Windsor, be hanged by the neck till dead. And it is ordered that a warrant be issued by the clerk of the County Court within and for the county of Bennington, under the seal of said court, to the sheriff of said Windsor County, commanding said sheriff to cause said sentence to be carried into effect.

"And it is also the sentence of this court that in the meantime you, the said Mary M. Rogers, be confined in said State prison, at hard
15 labor therein, till within three months of said time fixed for said execution; and for and during said three months next prior to said time fixed for the execution, and up to said execution, you, the said Mary M. Rogers, be confined in solitary confinement in said State prison."

Now, therefore, by the authority of the State of Vermont, you are hereby commanded that upon the first Friday in February next, in the year of our Lord one thousand nine hundred and five, between the hours of one and two o'clock in the afternoon of said day, within the walls or enclosed yard of the State prison in Windsor, in the county of Windsor, you cause execution of said sentence of said honorable court, in all respects to be done and performed upon the body of the said Mary M. Rogers, agreeably to the statute laws of the State of Vermont, and for so doing this shall be your sufficient warrant.

Given under my hand, pursuant to the order and under the seal of said honorable County Court at Bennington, in the county of Bennington aforesaid, this second day of January, in the year of our Lord one thousand nine hundred and five.

[SEAL.] HARRY T. CUSHMAN, *Clerk.*

To the sheriff of the County of Windsor and State of Vermont, greeting:

Whereas Mary M. Rogers, of Bennington, in the county of Bennington and State of Vermont, was, by the consideration and judgment of the honorable County Court in and for the county of Bennington and State of Vermont, begun and held at said Bennington on the first Tuesday of December, 1903, duly convicted of the crime of murder in the first degree, to wit, the murder of Marcus M. Rogers, on the 12th day of August, 1903, and was in said court then and there sentenced by said court in session in the following words, to wit:

16 "The sentence of the court is that you, said Mary M. Rogers, on the first Friday of February, in the year of our Lord one thousand nine hundred and five, between the hours of one and two o'clock in the afternoon of said day, within the walls or enclosed yard of the State prison at Windsor, in the county of Windsor, be hung by the neck until dead. And it is ordered that a warrant be issued by the clerk of the County Court within and for said county of Bennington, under the seal of said court, to the said sheriff of said county of Windsor,

commanding said sheriff to cause said sentence to be carried into effect. And it is also the sentence of this court that in the meantime you, said Mary M. Rogers, be confined in said State prison at hard labor therein until within three months of the said time fixed for said execution and for and during three months next prior to the time fixed for said execution, and up to said execution you, the said Mary M. Rogers, be confined in solitary confinement in the said State prison."

And whereas under and by virtue of the said judgment and sentence of the said court, there was, by the clerk of the said court and under the seal of the said court, on January 1, 1904, duly issued a mittimus directed to the said sheriff of the said county of Bennington, therein reciting said judgment and sentence of said court, and commanding him, the said sheriff of said Bennington County, to take the body of the said Mary M. Rogers and her to commit to the said State prison at said Windsor, there to stand to and abide the judgment and sentence of said court as aforesaid. And whereas by virtue of said mittimus the sheriff of the county of Bennington did, on, to wit, January 2, 1904, take the body of the said Mary M. Rogers and her commit to the said State prison at the said Windsor.

And whereas on, to wit, the 2nd day of January, 1905, there was issued by the clerk of said County Court of said county of Bennington,
17 and under the seal of said court, a warrant directed to the said sheriff of the said county of Windsor, therein reciting the said judgment and sentence of said court as hereinabove set forth and by the authority of the State of Vermont commanding the said sheriff that upon the first Friday of February next, in the year of our Lord one thousand nine hundred and five, between the hours of on and two o'clock in the afternoon of the said day, within the walls of enclosed yard of the said State prison of said Windsor, to cause execution of said sentence of the said honorable court in all respects to be done and performed upon the body of her, the said Mary M. Rogers, agreeably to the provisions of the law of Vermont:

Now, therefore, I, Charles J Bell, governor of the State of Vermont, under and by virtue of the power and authority vested in me by the constitution of the State of Vermont, do hereby grant to and unto the said Mary M. Rogers a reprieve of and from the said sentence of death of said court as above set forth to and until Friday, the 2nd day of June, 1905, to and until between the hours of one and two o'clock in the afternoon of the said 2nd day of June, 1905, when and whereupon you shall in all respects execute and carry out the judgment and sentence of death of said court, as hereinabove set forth.

Given under my hand and the seal of the State of Vermont at Montpelier this 2nd day of February, in the year of our Lord one thousand nine hundred and five and in the year of the Independence of the United States the one hundred and twenty-ninth.

[SEAL.] C. J. BELL, *Governor.*

By the governor:

CHARLES T. WALTER,
Secretary of Civil and Military Affairs.

17½ (Indorsed:) Reprieve of Mary M. Rogers, February 2, 1905, to June 2, 1905.

18 *To the sheriff of the county of Windsor and State of Vermont, greeting:*

Whereas Mary M. Rogers, of Bennington, in the county of Bennington and State of Vermont, was, by the consideration and judgment of the honorable County Court in and for the county of Bennigton and State of Vermont, begun and held at said Bennington on the first Tuesday of December, 1903, duly convicted of the crime of murder of Marcus M. Rogers on the 12th day of August, 1903, and was in said court then and there sentenced by said court in session in the following words, to wit:

"The sentence of the court is that you, said Mary M. Rogers, on the third day of February, in the year of our Lord one thousand nine hundred and five, between the hours of one and two o'clock in the afternoon of said day, within the walls or enclosed walls of the State prison at Windsor, in the county of Windsor, be hung by the neck until dead. And it is ordered that a warrant be issued by the clerk of the County Court within and for said county of Bennington, under the seal of said court, to the said sheriff of said county of Windsor, commanding said sheriff to cause said sentence to be carried into effect. And it is also the sentence of this court that in the meantime you, said Mary M. Rogers, be confined in said State prison at hard labor therein until within three months of the said time fixed for said execution, and for and during three months next prior to the time fixed for said execution, and up to said execution, you, the said Mary M. Rogers, be confined in solitary confinement in the said State prison."

And whereas under and by virtue of the said judgment and sentence of the said court, there was, by the clerk of the said court, and under the seal of said court, on January 1, 1904, duly issued a mittimus directed to the said sheriff of the said county of Bennington, therein reciting said judgment and sentence of said court, and commanding him, the said sheriff of said Bennington County, to take the body of the said Mary M. Rogers and her to commit to the said State prison at said Windsor, there to stand to and abide the judgment and sentence of said court as aforesaid. And whereas by virtue of said mittimus, the sheriff of the county of Bennington did, on, to wit, January 2, 1904, take the body of the said Mary M. Rogers and her commit to the said State prison at said Windsor.

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And whereas on, to wit, the 2nd day of January, 1905, there was issued by the clerk of said County Court of said county of Bennington, and under the seal of said court, a warrant directed to the said sheriff of the said county of Windsor, therein reciting the said judgment and sentence of said court, as hereinabove set forth, and by the authority of the State of Vermont commanding the said sheriff that upon the first Friday of February then next in the year of our Lord one thousand nine hundred and five, between the hours of one and two o'clock in the afternoon of the said day, within the walls or enclosed yard of the said State prison at said Windsor he cause execution of the sentence of the said honorable court in all respects to be done and performed upon the body of her the said Mary M. Rogers, agreeably to the provisions of the law of Vermont. And whereas I, Charles J. Bell, governor of the State of Vermont, under and by virtue of the power and authority vested in me by the constitution of the State of Vermont, did, on the

2nd day of February, in the year of our Lord one thousand nine hundred and five, under my hand and the seal of the State of Vermont, grant to and unto the said Mary M. Rogers a reprieve of and from the said sentence of death of said court, as above set forth, to and until Friday, the 2nd day of June, 1905, to and until between the hours of one and two in the afternoon of the second day of June, 1905, with the order and direction therein that then and thereupon on said second day of June, 1905, you should in all respects execute and carry out the judgment and sentence of death of said court, as hereinabove set forth, and which reprieve did fully set forth the judgment and sentence of death of said court, all as hereinabove set forth.

Now, therefore, I, Charles J. Bell, governor of the State of Vermont, under and by virtue of the power and authority vested in me by the constitution of the State of Vermont, do hereby further grant to and unto the said Mary M. Rogers a reprieve to and from the said sentence of death of said court, as above set forth, to and until the twenty-third day of June, 1905, to and until between the hours of one and two o'clock in the afternoon of the said Friday the 23d day of June, 1905, when and whereupon you shall in all respects execute and carry out the judgment and sentence of death of said court, as hereinabove set forth.

Given under my hand and the seal of the State of Vermont at Montpelier, this first day of June, in the year of our Lord one thousand nine hundred and five, and in the year of the Independence of the United States the one hundred and twenty-ninth.

C. J. BELL, *Governor.*

By the Governor:

CHARLES T. WALTER,
Secretary of Civil and Military Affairs.

(Endorsed:) Filed June 21, 1905. Geo. E. Johnson, clerk.

To Honorable Hoyt H. Wheeler, judge of the District Court of the United States in and for the District of Vermont:

Wilson S. Lovell, of Windsor, in the county of Windsor and State of Vermont, makes this, his return, to the writ of habeas corpus to him directed (he therein being erroneously called William S. Lovell), issued by your honor on the 19th day of June, 1905, wherein and by said writ, he, the said Lovell, is commanded to have the body of Mary Mabel Rogers, by him imprisoned and detained, as it is said, together with the time and cause of said imprisonment and detention, before your honor forthwith at the court-house in Windsor, in the said county of Windsor, to do and receive what shall then and there be considered concerning the said Mary Mabel Rogers, and thereupon says:

That the said Mary Mabel Rogers is in his custody and by him imprisoned and detained at the State prison of the State of Vermont, at said Windsor. That your respondent here is the superintendent and keeper of the said State prison and in charge and control thereof, and has been such superintendent and keeper in charge and control thereof under and by authority of the laws of the State of Vermont since the 1st day of April, 1905. That when your respondent on first day of April, 1905, entered into his duties as said superintendent and keeper of said State prison,

and entered into the control and charge of the said State prison, he found confined therein the said Mary Mabel Rogers, and found her name enrolled upon the official records of said prison, as a prisoner therein, and found in the files in the office of said prison kept as required by law, a certain copy of a certain mittimus issued by the honorable County Court, within and for the county of Bennington and State of Vermont, duly served by H. S. Willson, sheriff of the said county of Bennington, all as
22 appears by the copy of said mittimus and copy of said return which is annexed to and made a part of this return; and that he further found in the said files of said prison office a certified copy of a certain reprieve granted unto the said Mary Mabel Rogers of and from the sentence of death of said court, as recited in said mittimus, all under the hands of Charles J. Bell, governor of the State of Vermont, and under the seal of the State of Vermont, a true copy of which reprieve is hereunto annexed and made a part of this return; and that on the first day of June, 1905, there was delivered to your respondent by Charles T. Walter, secretary of civil and military affairs of the State of Vermont, a certain certified copy of a further reprieve unto the said Mary Mabel Rogers of and from the said sentence of death of said court, as recited in said mittimus, a copy of which said further reprieve is annexed to and made a part of this return; and your respondent now holds the said Mary Mabel Rogers in his custody and control, to wit, imprisoned in said State prison, solely and only by virtue of said copy of said mittimus and said copies of said reprieves, as above set forth, and under and by virtue of no other authority, claim, or right, and that he holds her, the said Mary Mabel Rogers, *sp* in custody and control, to wit, so imprisoned in said State prison, to await the execution of the sentence of death upon her, as recited in said mittimus and in said reprieve, all according to the constitution and laws of the State of Vermont.

That when your respondent here so entered into charge and control of said prison, as superintendent and keeper thereof, as hereinbefore recited, he found the relator, the said Mary Mabel Rogers, confined in a room in the woman's ward of said State prison; said room being on the outer westerly wall thereof, being a room as your respondent estimates, twelve feet square, with two outside windows thereto, from one of which windows a view can be had of quite a portion of the westerly portion of State
23 street in said Windsor; that up to the time of this proceeding the said relator has not to my knowledge been out of said room since your respondent so took charge and control of said prison as keeper, as aforesaid, except on one occasion for a short time to consult with a priest; that said room has one double door opening into the corridor, with double locks thereon, and iron bars at the windows thereof; that since your respondent so became keeper of said prison, to wit, April 1st, 1905, the relator, Mary Mabel Rogers has been visited in said room by one Miss Durkee, the matron of said prison, a number of times each day, to wit, twelves times each day, according to the best judgment and belief of your respondent here, and on frequent occasions the said matron has remained in said room with the relator, visiting with her and conversing with her, sometimes for a few minutes and sometimes for as much as an hour at a time; all up to June 10th, 1905; that during said time from said April 1st to June 10, 1905, another female, an assistant to said

matron, has frequently visited the said room and conversed with said prisoner on an average of two or three times each day; that during said time the relator has been visited by the priest or chaplain at least once each week; that on June first, 1905, the relator was visited in her room by your respondent, together with the sheriff of the county of Windsor and the State's attorney of said county of Windsor and another person, not an official, at which times notice was given to the relator of the second reprieve herein referred to, and which was the purpose of said visit; that during that time she has had at frequent intervals literature consisting of magazines and religious periodicals, and occasionally a newspaper.

That since June 10th, 1905, until the commencement of this proceeding, there has been constantly present with the relator a female person as guard of her, and she has once since June 10th and before the commencement of this proceeding been visited by her mother and sister.

24 That your respondent here has no personal knowledge concerning the confinement of the relator previous to said April 1st, 1905, but that he understands and believes that since November 2, 1904, the relator has been kept in confinement in substantially the same manner, and has been visited and seen by other persons to substantially the same extent and in substantially the same manner as she has since April 1st, 1905.

Supt. W. S. Lovell deposition:

Examined by Mr. MALONEY.

Ques. Mr. Lovell, has this petitioner, since you have had to do with the prison, been in solitary confinement?

A. That is what we call solitary confinement.

Ques. You have calculated to confine her in solitary confinement?

A. It is what we call solitary confinement, I suppose.

Ques. (By Mr. FITTS.) All in the manner as you have specifically set forth in the paper just read?

A. Yes; I calculated to have it show there plainly how she is situated. I think I have set it forth truly, described the room, the surroundings, and of course I call it that she is in solitary confinement.

Ques. I suppose that is what you calculated to do—to follow out the statute?

A. Yes; what the statute requires.

Ques. I understood you yesterday to say that is what your return would be to such question—that she has been in solitary confinement.

A. That is what I call it—in solitary confinement.

Ques. That is your understanding and definition of the term?

A. Yes.

Ques. These persons you refer to as going to consult with her and visit her are her guards and death watch?

A. Yes. This Mrs. Durkee is matron, and she has a niece that works for us at the prison, and she, in case Mrs. Durkee wants anything, she would call her, and perhaps she would stay with her while she was gone for something, instead of locking the outside door.

25 Ques. And, as I understand you, not for the purpose of visiting her, but guarding and watching.

A. They are guards; yes, sir.

Ques. The guards have been on since the 10th day of June?

A. I think it was the 10th day of June.

Ques. (By Mr. FITTS.) Special guards have been on since the 10th day of June?

A. I think we put the deathwatch on ten days before the execution was to take place.

Ques. What you term deathwatch are guards, and they have constantly been with her since June 10th?

A. Yes; Mrs. Durkee goes on at 7.00 p. m. and off at 7.00 a. m. Miss Tuksbury is on for the rest of the time.

Ques. She is kept away from the rest of the prisoners?

A. Yes.

And your respondent brings here into court the body of the said Mary Mabel Rogers, as required in the said writ of habeas corpus, issued by your honor in the premises.

Dated June 21, 1905.

Attest:

WILSON. S. LOVELL.

DISTRICT OF VERMONT.

At Brattleboro, in said district, this 21st day of June, 1905, personally appeared Wilson S. Lovell and made oath that the foregoing return by him subscribed is true.

Before me,

GEO. E. JOHNSON,
Clerk U. S. District Court, District of Vt.

That when your respondent here so entered into charge and control of said prison, as superintendent and keeper thereof, as hereinbefore recited, he found the relator, the said Mary Mabel Rogers, confined in a room in the woman's ward of said State prison; said room being on the outer westerly wall thereof, being a room as your respondent estimates, twelve feet square, with two outside windows thereto, from one of which windows a view can be had of quite a portion of the westerly portion of State street, in said Windsor; that up to the time of this proceeding the said relator has not been out of said room since your
26 respondent so took charge and control of said prison as keeper, as aforesaid, but has been confined therein by me without opportunity to see or converse with others except keepers, except on one occasion for a short time to consult with a priest, when they stepped into another room within the prison and all the time remained in sight of keepers; that said room has one double door opening into the corridor, with double locks thereon and iron bars at the windows thereof; that since your respondent so became keeper of said prison, to wit, April 1st, 1905, the relator, Mary Mabel Rogers, has been guarded in said room by one Miss Durkee, the matron of said prison; that during said time, from April 1st to June 10th, 1905, a female assistant to said matron has been on guard a part of the time to assist and relieve said matron; that during said time the relator has been visited by the prison chaplain once each week; that on June 1st, 1905, this respondent went to said room or cell with the sheriff of the county of Windsor to read the reprieve of the governor,

hereto attached, and two other persons besides the matron were present; that she has had at frequent intervals literature, consisting of magazines and religious periodicals.

That since, on or about June 10th, 1905, until the commencement of this proceeding, there has been constantly present with the relator a female person as guard, who is called the death watch, and she has once, since June 10th and before the commencement of this proceeding, been visited by her mother and sister.

This respondent understands and believes that ever since November 2, 1904, the relator has been kept in confinement in the same manner as above described, which is solitary confinement, preparatory to the execution of a person condemned for murder under the statutes of the State of Vermont and according to the rules and usages of the State prison, and I am now holding the relator in such confinement.

WILSON S. LOVELL.

27 Subscribed and sworn to at Brattleboro, in said district, this 22nd day of June, 1905.

GEO. E. JOHNSON, *Clerk.*

STATE OF VERMONT,
Bennington County, ss:

To the sheriff of Bennington County or either of his deputies, greeting:

Whereas Mary M. Rogers, of Bennington, in the county of Bennington, aforesaid, before and by the consideration of the honorable the County Court, begun and held at Bennington, within and for said county of Bennington, on the first Tuesday of December, A. D. 1903, was duly convicted of the crime of murder in the first degree, for that the said Mary M. Rogers, at Bennington, in the county of Bennington, aforesaid, on the twelfth day of August, A. D. 1902, with force and arms did feloniously, wilfully, and of her malice aforethought kill and murder one Marcus M. Rogers, then and there, being contrary to the form, force, and effect of the statute in such case made and provided and against the peace and dignity of the State.

And was thereupon by said court sentenced in the following words, namely:

"The sentence of the court is that you, the said Mary M. Rogers, on the first Friday of February, 1905, between the hours of one and two o'clock in the afternoon of said day, within the walls or enclosed yard of the State prison in Windsor, in the county of Windsor, be hanged by the neck till dead. And it is ordered that a warrant be issued by the clerk of the County Court within and for the county of Bennington, under the seal of said court, to the sheriff of said Windsor County, commanding said sheriff to cause said sentence to be carried into effect.

"And it is also the sentence of this court that in the meantime you, the said Mary M. Rogers, be confined in said State prison at hard labor therein till within three months of said time fixed for said execution; and for and during said three months next prior to said time fixed for the execution and up to said execution, you, the said Mary M. Rogers, be confined in solitary confinement in said State prison."

Now, therefore, by the authority of the State of Vermont, you are hereby commanded to take the body of the said Mary M. Rogers and her commit to the keeper of the State prison at Windsor, in the county of Windsor, within said prison, who is hereby commanded to receive the said Mary M. Rogers and her confine within said State prison strictly
28 in compliance with said sentence of the court.

Fail not, but due service and return make according to law.

Dated at Bennington, in said county of Bennington, this first day of January, A. D. 1904.

HARRY T. CUSHMAN, *Clerk*

STATE OF VERMONT,
Bennington County, ss:

At Bennington, in said county, this 2nd day of January, 1904, I arrested the body of the within-named Mary M. Rogers, and on the same day at Windsor, in the county of Windsor, I committed the body of the said Mary M. Rogers to the keeper of the State prison at Windsor, in said county of Windsor, within said prison, and delivered to said keeper of said prison a true and attested copy of this mittimus with this, my return, thereon endorsed.

Attest.

H. S. WILSON, *Sheriff.*

A true copy. Attest.

H. S. WILSON, *Sheriff.*

To the sheriff of the county of Windsor and State of Vermont, greeting:

Whereas Mary M. Rogers, of Bennington, in the county of Bennington and State of Vermont, was, by the consideration and judgment of the honorable County Court in and for the county of Bennington and State of Vermont, begun and held at said Bennington on the first Tuesday of December, 1903, duly convicted of the crime of murder in
29 the first degree, to wit, the murder of Marcus M. Rogers, on the 12th day of August, 1903, and was in said court then and there sentenced by said court in session in the following words, to wit:

"The sentence of the court is that you, said Mary M. Rogers, on the first Friday of February, in the year of our Lord one thousand nine hundred and five, between the hours of one and two o'clock in the afternoon of said day, within the walls or enclosed yard of the State prison at Windsor, in the county of Windsor, be hung by the neck until dead. And it is ordered that a warrant be issued by the clerk of the County Court within and for said county of Bennington, under the seal of said court, to the said sheriff of said county of Windsor, commanding said sheriff to cause said sentence to be carried into effect. And it is also the sentence of this court that in the meantime you, said Mary M. Rogers, be confined in said State prison at hard labor therein until within three months of the said time fixed for said execution and for and during three months next prior to the time fixed for said execution, and up to said execution you, the said Mary M. Rogers, be confined in solitary confinement in the said State prison."

And whereas under and by virtue of the said judgment and sentence of the said court there was, by the clerk of the said court, and under the seal of the said court, on January 1, 1904, duly issued a mittimus directed

to the said sheriff of the said county of Bennington, therein reciting said judgment and sentence of said court, and commanding him, the said sheriff of said Bennington County, to take the body of the said Mary M. Rogers and her to commit to the said State prison at said Windsor, there to stand to and abide the judgment and sentence of said court as aforesaid. And whereas by virtue of said mittimus the sheriff of the county of Bennington did, on, to wit, January 2, 1904, take the body of the said Mary M. Rogers and her commit to the said State prison at the said Windsor.

30 And whereas on, to wit, the 2nd day of January, 1905, there was issued by the clerk of said County Court of said county of Bennington, and under the seal of said court, a warrant directed to the said sheriff of the said county of Windsor therein reciting the said judgment and sentence of said court as hereinabove set forth, and by the authority of the State of Vermont commanding the said sheriff that upon the first Friday of February next, in the year of our Lord one thousand nine hundred and five, between the hours of one and two o'clock in the afternoon of the said day, within the walls of enclosed yard of the said State prison of said Windsor, to cause execution of said sentence of the said honorable court in all respects to be done and performed upon the body of her, the said Mary M. Rogers, agreeably to the provisions of the law of Vermont:

Now, therefore, I, Charles J. Bell, governor of the State of Vermont, under and by virtue of the power and authority vested in me by the constitution of the State of Vermont, do hereby grant to and unto the said Mary M. Rogers a reprieve of and from the said sentence of death of said court as above set forth to and until Friday, the 2nd day of June, 1905, to and until between the hours of one and two o'clock in the afternoon of the said 2nd day of June, 1905, when and whereupon you shall in all respects execute and carry out the judgment and sentence of death of said court, as hereinabove set forth.

Given under my hand and the seal of the State of Vermont at Montpelier, this 2nd day of February, in the year of our Lord one thousand nine hundred and five and in the year of the Independence of the United States the one hundred and twenty-ninth.

[SEAL.] C. J. BELL, *Governor.*

By the governor:

CHARLES T. WALTER.

31 *Secretary of Civil and Military Affairs.*

The above is a true copy of the reprieve of Mary M. Rogers as delivered to Henry H. Peck, sheriff of Windsor County.

CHARLES T. WALTER,
Secretary of Civil and Military Affairs.

February 3, 1905.

(Endorsed:) Reprieve of Mary M. Rogers, February 2nd, 1905, to June 2, 1905.

To the sheriff of the county of Windsor and State of Vermont, greeting:

Whereas Mary M. Rogers, of Bennington, in the county of Bennington and State of Vermont, was, by the consideration and judgment of the

honorable County Court in and for the county of Bennington and State of Vermont, begun and held at said Bennington on the first Tuesday of December, 1903, duly convicted of the crime of murder of Marcus M. Rogers on the 12th day of August, 1903, and was in said court then and there sentenced by said court in session, in the following words, to wit:

"The sentence of the court is that you, said Mary M. Rogers, on the third day of February, in the year of our Lord one thousand nine hundred and five, between the hours of one and two o'clock in the afternoon of said day, within the walls or enclosed walls of the State prison at Windsor, in the county of Windsor, be hung by the neck until dead. And it is ordered that a warrant be issued by the clerk of the County Court within and for said county of Bennington, under the seal of said court, to the said sheriff of said county of Windsor, commanding said sheriff to cause said sentence to be carried into effect. And it is also the sentence of this court that in the meantime you, said Mary M. Rogers, be confined in said State prison at hard labor therein until within three months of the said time fixed for said execution, and for and during three months next prior to the time fixed for said execution, and
32 up to said execution you, the said Mary M. Rogers, be confined in solitary confiement in the said State prison."

And whereas under and by virtue of the said judgment and sentence of the said court, there was, by the clerk of the said court, and under the seal of said court, on January 1, 1904, duly issued a mittimus directed to the said sheriff of the said county of Bennington, therein reciting said judgment and sentence of said court, and commanding him, the said sheriff of said Bennington County, to take the body of the said Mary M. Rogers and her to commit to the said State prison at said Windsor, there to stand to and abide the judgment and sentence of said court as aforesaid. And whereas by virtue of said mittimus, the sheriff of the county of Bennington did, on, to wit, January 2, 1904, take the body of the said Mary M. Rogers and her commit to the said State prison at said Windsor.

And whereas on, to wit, the 2nd day of January, 1905, there was issued by the clerk of said County Court of said county of Bennington, and under the seal of said court, a warrant directed to the said sheriff of the said county of Windsor, therein reciting the said judgment and sentence of said court, as hereinabove set forth, and by the authority of the State of Vermont commanding the said sheriff that upon the first Friday of February then next in the year of our Lord one thousand nine hundred and five, between the hours of one and two o'clock in the afternoon of the said day, within the walls or enclosed yard of the said State prison at said Windsor, he cause execution of the sentence of the said honorable court in all respects to be done and performed upon the body of her, the said Mary M. Rogers, agreeably to the provisions of the law of Vermont. And whereas I, Charles J. Bell, governor of the State of Vermont, under and by virtue of the power and authority vested in me by the constitution of the State of Vermont, did, on the 2nd day of February, in the year of our Lord one thousand nine hundred and five, under my
33 hand and the seal of the State of Vermont, grant to and unto the said Mary M. Rogers a reprieve of and from the said sentence of death of said court, as above set forth, to and until Friday, the 2nd day of June, 1905, to and until between the hours of one and two in the

afternoon of the second day of June, 1905, with the order and direction therein that then and thereupon on said second day of June, 1905, you should in all respects execute and carry out the judgment and sentence of death of said court, as hereinabove set forth, and which reprieve did fully set forth the judgment and sentence of death of said court, all as hereinabove set forth.

Now, therefore, I, Charles J. Bell, governor of the State of Vermont, under and by virtue of the power and authority vested in me by the constitution of the State of Vermont, do hereby grant to and unto the said Mary M. Rogers, a reprieve to and from the said sentence of death of the said court, as above set forth, to and until the twenty-third day of June, 1905, to and until between the hours of one and two o'clock in the afternoon of the said Friday, the 23d day of June, 1905, when and whereupon you shall in all respects execute and carry out the judgment and sentence of death of said court, as hereinabove set forth.

Given under my hand and the seal of the State of Vermont, at Montpelier, this first day of June, in the year of our Lord one thousand nine hundred and five and in the year of the Independence of the United States the one hundred and twenty-ninth.

C. J. BELL, *Governor.*

By the governor:

CHARLES T. WALTER,
Secretary of Civil and Military Affairs.

I hereby certify that the foregoing is a full, true, and correct copy of the original reprieve granted by his excellency, Governor C. J. Bell, to Mary M. Rogers, under date of June 1st, 1905.

Attest:

CHARLES T. WALTER,
Secretary of Civil and Military Affairs.

34 And afterwards, and on the same 21st day of June, A. D. 1905, said cause came on for hearing before the Honorable Hoyt H. Wheeler, judge of the United States District Court within and for the District of Vermont.

And afterwards, and on the 22nd day of June, A. D. 1905, at 9.45 o'clock a. m., it was ordered that said petition be denied, and the petitioner was remanded to custody of the superintendent of the Vermont State prison.

And afterwards, and on the 22nd day of June, A. D. 1905, at 9.45 o'clock a. m., the petitioner entered a motion for appeal to the Supreme Court of the United States.

And afterwards, and on the same 22nd day of June, A. D. 1905, the relator filed her petition for appeal to the Supreme Court of the United States; which said petition is in the words and figures following:

35 District Court of the United States, District of Vermont.

MARY MABEL ROGERS
v.
HENRY H. PECK, WILSON S. LOVELL.

The above-named plaintiff in error, Mary Mabel Rogers, conceiving herself aggrieved by the order entered on the 22nd day of June, A. D. 1905, in the above-entitled proceeding, doth hereby appeal from said order to the Supreme Court of the United States; and she prays that this her appeal may be allowed, and that a transcript of the record and proceedings and papers upon said order so made, together with the proceedings of the County Court within and for the county of Bennington, and the record of the proceedings in the Supreme Court of Vermont in the petition for a new trial, together with the transcript of the record of the trial in Bennington County Court, duly authenticated, may be sent to the Supreme Court of the United States.

MARY MABEL ROGERS,
By F. M. BUTLER,
T. W. MOLONEY, and
E. B. FLINN,
Att'ys for Plaintiff and Appellant.

STATE OF VERMONT, *June , 1905.*

And now, to wit, on this 22 day of June, A. D. 1905, it is ordered that the foregoing appeal be allowed as prayed for, and that the relator be remanded to the custody from which she was taken for safe keeping pending the appeal, and citation issued.

HOYT H. WHEELER, *Judge.*

(Endorsed:) Filed June 22nd, 1905. Geo. E. Johnson, clerk.

36 And afterwards, and on the same 22nd day of June, A. D. 1905, at 5.30 p. m., it was ordered by the court that the foregoing appeal be allowed as prayed for, and that the relator be remanded to the custody from which she was taken for safe keeping, pending the appeal, and citation issued.

And afterwards, and on the 3rd day of July, A. D. 1905, the court handed down its opinion in said cause, which said opinion is in the words and figures following:

37 District Court of the United States, District of Vermont.

In re Mary Mabel Rogers, on habeas corpus.

WHEELER, J.

By section 4886 of the Vermont statutes, the punishment of murder in the first degree is death. By section 4007, the court at the time of sentencing to death, if it is six months before execution, is to sentence to hard labor in the State prison until three months before execution, and to solitary confinement from the time of hard labor to the time of execu-

tion. The prisoner may bring a petition for a new trial to the Supreme Court, and by sections 1997 and 1998 two judges may allow it to be filed, and if they do so they are to allow a stay; and by section 1999, if on hearing the petition is refused, the court is to appoint a time for execution. In cases of treason or murder, by the constitution, section 11, the governor may grant a reprieve, but not pardon, until after the next session of the assembly.

The petitioner here was sentenced by Bennington County Court in December, 1903, to hard labor until three months before February 3, 1905, and to solitary confinement during that three months and then to be executed. Before that day she was reprieved by the governor to June 2, 1905. A petition for a new trial was allowed to be filed by two judges, with a memorandum that the reprieve was a sufficient stay. The petition was refused by the court before June 2nd, without appointing
38 any time for the execution of the sentence, but leaving the time to which she was reprieved to stand. She was further reprieved from June 2nd to June 23rd, leaving the sentence of execution to be carried into effect then.

She appears to have been kept in the same solitary confinement since February 3rd that she was during the three months before February 3rd, until she was produced on this writ, without further sentence than that of Bennington County Court.

In Medley's case, 134 U. S., 160, solitary confinement with the sentence of death appears to have been considered and held to be of itself a separate and severe punishment in addition to being in custody until execution by hanging; and he appears to have been discharged from that confiement because the State of Colorado had, by statute going into effect after the commission of the crime, provided for the punishment of solitary confinement for a time before the execution.

In this case the statutes require the keeper of the prison, having custody, to inflict solitary confinement until February 3rd, as it was imposed by sentence of Bennington County Court. The prisoner was left to suffer that punishment after February 3rd by the reprieve of the governor and has been suffering it every since. The governor could only reprieve to a certain time, and the Supreme Court could only appoint a new time for execution. Neither could resentence, and she has been suffering the punishment of solitary confinement since February 3rd, without sentence, and has been brought from such confinement on this writ. The 14th amendment to the Constitution of the United States provides that no State shall deprive any person of life, liberty, or property without due process of law.

The petitioner apparently has been kept in solitary confine-
39 ment, not imposed as a sentence by any court anywhere, but because the statute, section 2007, left that to be done, and by that law the State of Vermont required the prison officials to inflict that punishment in addition to that of hanging. It was not the governor, nor the Supreme Court of the State. So this appears to be a deprivation of liberty of the State, to the extent of this solitary confinement.

This situation led to the granting of this writ. The question now is whether it is sufficient to require holding the petitioner out of the custody of the State prison officials and discharging her, because she has been

unlawfully made to suffer that punishment until now and if remanded to the full custody of the prison officials would have to suffer it till the time of execution. Due process of law would seem to require that the person be present and have an opportunity to be heard at the time of the sentence. No court anywhere would probably sentence to such severe punishment as solitary confinement without the presence of the prisoner. She had not been present at any sentence to that infliction, and therefore appears to have been deprived of the right to be free from it by the State without the due process of law guaranteed by the Federal Constitution. It follows that she should be discharged from that solitary confinement if it can and should now be done. This court has no authority, in any *any* manner, to interfere with the State proceedings except to prevent any of the privileges or immunities of the person, under the Constitution of the United States, from being taken away or abridged. She has all the while had the right to apply to the State courts for relief from this solitary confinement by habeas corpus proceedings like these. According to Storti *vs.* Massachusetts, 183 U. S., 138, and other cases as understood, these matters should, to the extent of denial or failure, be followed out in the State courts.

A discharge from the solitary confinement on this writ now would be so near the time of execution under the expiration of the reprieve as to be practically inoperative while it could have been applied for sooner in the State courts or here; and on the whole these are so far matters of State procedure that it seems that the petitioner should be remanded. It appears that an application for a writ of error to the State Supreme Court has been before Mr. Justice Peckham, and his decision thereon has been referred to. If the questions here had been involved there before him, of course they would not have been examined here, but it is understood that they were not. An application for a writ of error to review the proceedings of the Supreme Court on the petition for a new trial would not seem to involve any question as to the custody of the petitioner pending that petition, or after a reprieve. The facts stated as to the petition for a new trial, the memorandum of the two judged thereon, its disposition and the omission therefrom of any appointment thereon by the Supreme Court of a time of execution, are found from concessions made by the attorney-general of the State and counsel for the petitioner in her presence at the hearing; and the fact of solitary confinement since February 3rd the same as before as stated is inferred from the returns, and like concessions, of the prison officials.

Petitioner remanded.

After the petitioner was remanded an appeal to the Supreme Court of the United States was applied for and opposed by the State. In Storti vs. Massachusetts an appeal was denied promptly by the judges of the Circuit Court to give "counsel an opportunity to seasonably reach the Supreme Court, or some justice thereof." An appeal appears to have been allowed afterwards by Mr. Justice Gray. In re Storti, 109 Fed., 807. Here there was no sufficient time, only about one day before execution, in which to reach a justice of the Supreme Court, and no one else could allow an appeal if it should be denied here. What seems to be more of a Federal question than any involved or determined there arises here,

and to deny an appeal, which is largely a matter of right, would
41 arbitrarily cut off all chance to have it reviewed. After the petitioner was remanded to the custody of the State authorities, and an appeal had been applied for, but before it was allowed, the governor appears to have granted a further reprieve till the 8th of December, after the sitting of the Supreme Court at which the appeal may be determined.

Fred M. Butler, Thomas C. Moloney, Edward B. Flinn, for petitioner.
Clarke C. Fitts, attorney-general for the State.
(Endorsed:) Filed July 3rd, 1905. Geo. E. Johnson, clerk.

And afterwards, and on the 10th day of July, A. D. 1905, the citation issued in said cause was returned into court with service accepted in writing thereon; which said citation is hereto attached.

And afterwards, and on the 21st day of July, A. D. 1905, a transcript of record from Bennington County Court was duly filed in said cause; which said transcript of record is in the words and figures following:

42 STATE OF VERMONT,
County of Bennington:

Pleas before the honorable the Supreme Court for the State of Vermont, begun and held for the county of Bennington at Montpelier, in the county of Washington, on the second Tuesday of May, Anno Domini one thousand nine hundred and five, being the ninth day of said month, and it being a general term of said court.

Present, the Honorable John W. Rowell, chief judge; the Honorable James M. Tyler, the Honorable Loveland Munson, the Honorable Henry R. Start, the Honorable John H. Watson, the Honorable Seneca Haselton, the Honorable George M. Powers, associate judges. Melville E. Smilie, clerk. Harry T. Cushman, clerk for Bennington County.

On which day said court was opened and continued its sessions from day to day for the disposition of causes until the thirty-first day of May, A. D. 1905, when the same was adjourned without day.

Attest: HARRY T. CUSHMAN, *Clerk.*

43 MARY M. ROGERS
v.
STATE OF VERMONT.

Be it remembered that on the fifth day of May, in the year of our Lord one thousand nine hundred and five, before the honorable John W. Rowell and the honorable Loveland Munson, two judges of the Supreme Court for the State of Vermont, comes Mary M. Rogers, of Bennington, in our said county of Bennington, by Thomas W. Moloney, esquire, her attorney, and John H. Senter, esquire, counsel, after conviction of the said Mary M. Rogers of a capital offense and while the said Mary M. Rogers, upon said conviction, is sentenced to be hanged therefor, and presents to said two judges her certain petition in writing, signed with

the hand of the said Mary M. Rogers, and in the words and figures following, namely:

IN RE MARY M. ROGERS' PETITION FOR NEW TRIAL. } Supreme Court.

To the honorable Supreme Court of Vermont:

Your petitioner would respectfully represent that she is at present confined within the State's prison at Windsor, in the county of Windsor, by the consideration and judgment of the honorable County Court in and for the county of Bennington and State of Vermont, begun and held at said Bennington on the first Tuesday of December, 1903, having then and there been wrongfully convicted, as she says, of murder in the first degree, to wit, the murder of Marcus M. Rogers on the 12th
44 day of August, 1902, and was in court then and there sentenced by said court in session in the following words, to wit:

"The sentence of the court is that you, the said Mary M. Rogers, on the first Friday in February, in the year of our Lord one thousand nine hundred and five, between the hours of one and two o'clock in the afternoon of said day, within the walls or enclosed yard of the State prison at Windsor, in the county of Windsor, be hanged by the neck until dead;" and whereas the honorable Charles J. Bell, on the second day of February, A. D. 1905, at Montpelier, in the State of Vermont, then and there being the governor of Vermont, and by virtue of his power as such under the constitution, did grant to and unto your petitioner a reprieve of and from the said sentence of death to and until Friday, the second day of June, 1905. Now, therefore, your petitioner hereby presents this her petition to this honorable court, humbly praying that a new trial be granted unto her on the ground of newly discovered evidence and for errors apparent on the face of the record, a copy of which and said newly discovered evidence is hereto attached.

Dated at Windsor, in the county of Windsor, this twenty-first day of April, A. D. 1905.

(Signed) MARY M. ROGERS.

As by the original petition of said prisoner, now remaining among the records and files of this court, will fully and at length appear.

Whereupon, upon examination of said petition and due consideration of the matters and things alleged therein and thereby, the said two judges of the Supreme Court for the State of Vermont do determine that the same may be filed in this court, and furthermore do appoint a time and place when and where this court will hear the same, and do certify their determination thereon by their order in writing, under the official hands of the said two judges of said Supreme Court, and endorsed
45 upon said original petition, and which is in the words and figures following, namely:

Order for filing.

This petition having been presented to us, upon examination thereof, we determined that it may be filed in the Supreme Court, and appoint the second Wednesday of the next May term thereof, at nine o'clock in

the forenoon, for hearing the same. We make no order for staying execution, as a reprieve has been granted until the second day of June, next. The transcript of the evidence taken at the trial is, by agreement of counsel, treated as a copy hereto attached.

Done at Montpelier this fifth day of May, A. D. 1905.

(Signed) JOHN W. POWELL,
(Signed) LOVELAND MUNSON,
Judges of the Supreme Court.

As by said original order of said two judges, now remaining among the records and files of this court, will fully and at length appear.

Whereupon, and pursuant to said order and determination on the sixth day of May, one thousand nine hundred and five, the said Mary M. Rogers caused her said petition, together with the certificate and order of the two judges aforesaid endorsed thereon, to be duly filed for adjudication and determination in this court.

And now, in the present May term of this court, in the year of our Lord first aforesaid, namely, on the second Wednesday of said term, hither cometh the said Mary M. Rogers, by her attorneys aforesaid, to urge her said petition, and Clarke C. Fitts, the attorney-general of the State of Vermont, and with him, William P. Daley, the State's attorney for said county of Bennington, come also to defend the same.

Whereupon, the said petition being considered and the pro-
46 ceedings thereunder, as well as the arguments of the attorneys, and the premises being examined and fully understood and due deliberation being thereupon had, it is considered and adjudged by the court still here in session that the said prisoner, Mary M. Rogers, take nothing by her said petition, and that the same be dismissed, which is thereupon done.

A true record. Attest:

HARRY T. CUSHMAN, *Clerk.*

STATE OF VERMONT, *Bennington, to wit:*

I, Harry T. Cushman, clerk of the Supreme Court for the State of Vermont, for the county of Bennington, hereby certify the papers hereunto attached to show a true copy of the original record of an action upon petition heard, tried, and determined by and before said honorable court at the May term, 1905, thereof, and entitled upon the docket of said court for said term Mary M. Rogers v. State of Vermont, all as the same appears among the records and files of said Supreme Court for said term, now remaining in my office at Bennington, in the county of Bennington aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of said honorable Supreme Court at Bennington, in the county of Bennington, this 19th day of July, 1905.

[L. S.] HARRY T. CUCHMAN, *Clerk.*

(Endorsed:) Filed July 21st, A. D. 1905. Geo. E. Johnson, clerk.

47 And afterwards and on the 28th day of July, A. D. 1905, certified copies from the Supreme Court for the State of Vermont, for the county of Bennington, of the affidavits of Wilson S. Lovell,

E. W. Oakes, Edward B. Flinn, Mary A. Hayes, Charles W. Corcoran, Helen F. Corcoran, William Stinton, Barney Smith, Teresa Smith, Louis Haussler, Jane Smith, William Brant, Leroy D. McWayne, Charles McCarthy, William P. Haynes, George M. Lamb, Johanna Callahan, James C. Reilly, E. G. Hall, F. C. Archibald, and Daniel A. Guiltinan, of the record of the proceedings in the matter of Patrick Dwyer, and of the certificate of Charles W. Pilgrim, M. D., and of Shepard Tappen, clerk of the county of Rensselaer, and of the certificate and record of marriage of Marcus Merritt Rogers and Mary Mabel Bennett, being attached to the petition for a new trial of the said Mary M. Rogers, filed in said Supreme Court on the 6th day of May, 1905, were duly filed in this cause, which said affidavits are in the words and figures following:

48 IN RE MARY M. ROGERS, PETITION FOR A NEW TRIAL. } Supreme Court, May term, 1905.

I, Wilson S. Lovell, of Windsor, in the county of Windsor and State of Vermont, on oath depose, testify, and say that I was present at an interview had by E. B. Flinn with one Leon Perham, who, I am informed, was improved as a witness by the State in the trial of Mary M. Rogers, in the Bennington County Court, and that said Perham stated to said Flinn and to me and to E. W. Oakes, or in his presence, that he, the said Perham, lied when he testified on said trial, and did it to save his own neck. The date of this interview was Jan. 31, 1905, and took place in the State prison office at Windsor.

WILSON S. LOVELL.

Subscribed and sworn to at Windsor, in said county, this twenty-first day of February, A. D. 1905.
Before me.

EDWARD B. FLINN,
Master in Chancery.

49 IN RE MARY M. ROGERS, PETITION FOR A NEW TRIAL. } Supreme Court, May term, 1905.

I, E. W. Oakes, of Windsor, Vermont, on oath depose, testify, and say that on or about Jan. 31st, 1905, I heard Leon Perham tell E. B. Flinn that he, the said Perham, when he testified against Mary M. Rogers, in the County Court in Bennington, lied, and had to do it in order to save himself.

E. W. OAKES.

Subscribed and sworn to at Windsor, in the county of Windsor, this twenty-first day of April, A. D. 1905.
Before me.

EDWARD B. FLINN,
Master in Chancery.

50 IN RE MARY M. ROGERS, PETITION FOR NEW TRIAL. } Supreme Court, May term, 1905.

I, Edward B. Flinn, of Springfied, in the county of Windsor, on oath depose, testify, and say that on the thirty-first day of January, A. D.

1905, Leon Perham, in speaking of the testimony given by him on the trial of Mary M. Rogers, said that he lied when he testified, and had to in order save to his own neck.

EDWARD B. FLINN.

Subscribed and sworn to at Windsor, in said Windsor County, this 20th day of April, A. D. 1905.
Before me.

GILBERT F. DAVIS,
Notary Public.

51 STATE OF NEW YORK,
Rensselaer County, ss.

Miss MARY A. HAYES, being duly sworn, deposes and says:
That she is a resident of the village of Hoosick Falls, county of Rensselaer and State of New York.

Deponent further says that during the years 1893 and 1894 this deponent well knew Mary Mabel Rogers, who is now confined in the Windsor prison, in the State of Vermont, under sentence of death for the murder of her husband, Marcus Rogers, in the town of Bennington, State of Vermont.

That this deponent during the year above mentioned attended school in said village of Hoosick Falls together and at the same time with said Mary Mabel Rogers; and this deponent remembers distinctly that the said Mary Mabel Rogers was the butt of ridicule of nearly all the students attending the school in said village of Hoosick Falls at that time, on account of the many peculiarities which she, the said Mary Mabel Rogers, possessed, one particular peculiarity being the decorating of her hair and clothing with ribbons and bows of many and variegated colors, on account of which she presented a fantastic appearance, which drew upon her the ridicule of her schoolmates, and the sobriquet of the mope from them of which she was generally known by all her schoolmates.

Deponent further says that the said Mary Mabel Rogers was very backward in her studies; that she was of very low intelligence, and was considered by this deponent, her teachers, her schoolmates, and other people, with whom the said Mary Mabel Rogers came in contact, as a person very weak mentally.

MARY A. HAYES.

52 Sworn to before me this 6th day of April, 1905.

CHAS. A. MCCARTHY,
Notary Public, Rens. Co., N. Y.

STATE OF NEW YORK,
Rensselaer County, ss:

CHARLES W. CORCORAN, being duly sworn, deposes and says:
That he is a resident of the village of Hoosick Falls, county and State aforesaid.

That Mary Mabel Rogers, who this deponent is informed and believes is confined in Windsor prison, State of Vermont, for the murder of her husband, Marcus Rogers, worked for the mother of this deponent as a domestic for several months during the year 1897.

That for several years prior to the time the said Mary Mabel Rogers worked for his said mother, as aforesaid, this deponent knew the said Mary

Mabel Rogers, having frequently met her while in attendance at school in Hoosick Falls, and that then the said Mary Mabel Rogers was the subject of much ridicule from her schoolmates because of her foolish actions, because she appeared to this deponent and others as a child with a weak mind.

Deponent further says that while the said Mary Mabel Rogers worked for his mother as aforesaid, this deponent had many opportunities to observe the said Mary Mabel Rogers, her conduct, and actions; and this deponent knew the said Mary Mabel Rogers to be an impulsive, emotional person of very nervous disposition and excitable temperament—a person of very low intelligence and mentally weak.

CHAS. W. CORCORAN.

Sworn to before me this 6th day of April, 1905.

CHAS. A. McCARTHY,
Notary Public, Rens. Co., N. Y.

53 STATE OF NEW YORK,
Rensselaer County, ss:

Miss HELEN F. CORCORAN, being duly sworn, deposes and says:

That she is a resident of and a merchant doing business in the village of Hoosick Falls, county of Rensselaer, and State of New York.

Deponent further says that during the years 1894 and 1895 this deponent well knew Mary Mabel Rogers, who is now confined in the Windsor prison, in the State of Vermont, under sentence of death for the murder of her husband, Marcus Rogers, of the town of Bennington, Vermont.

That this deponent, during the year above mentioned, attended school in the village of Hoosick Falls aforesaid together and at the same time with the said Mary Mabel Rogers. This deponent remembers distinctly that the said Mary Mabel Rogers was the butt of ridicule for many of the students on account of the many peculiarities which she, the said Mary Mabel Rogers, possessed, one peculiarity being the decorating of her hair and clothing with ribbons and bows of various hues and colors, creating thereby a fantastic appearance, which drew upon her the ridicule of her schoolmates, and in which she apparently took much pride.

Deponent further says that the said Mary Mabel Rogers was backward in her studies; that she was of very low intelligence, and was known to this deponent and to other people with whom the said Mary Mabel Rogers came in contact as a person very weak intellectually.

HELEN F. CORCORAN.

Sworn to before me this 5th day of April, 1905.

CHAS. A. McCARTHY,
54 *Notary Public, Rens. Co., N. Y.*

STATE OF VERMONT,
Rensselaer County:

WILLIAM STINTON, being duly sworn, deposes and says:

That he is a resident and merchant doing business in the village of Hoosick Falls, in the county of Rensselaer and State of New York.

That Mary Mabel Rogers, who is now confined in Windsor prison, in the State of Vermont, now under sentence of death for the murder of her husband, Marcus Rogers, of the town of Bennington, Vermont, worked for this deponent for several months during the year 1897.

That said Mary Mabel Rogers worked for this deponent during said time as a domestic, and this deponent, by reason of said Mary Mabel Rogers being employed by him as aforesaid, had much opportunity to study the peculiarities and characteristics of the said Mary Mabel Rogers.

That while the outward appearance of said Mary Mabel Rogers was that on an ordinary intelligent person, this deponent well knew the said Mary Mabel Rogers to be a person of very low intelligence, possessed with a very nervous disposition, excitable temperament, and a person very weak mentally.

WILLIAM STINTON.

Sworn to before me this 5th day of April, 1905.

CHAS. A. MCCARTHY,
Notary Public, Rens. Co., N. Y.

55 STATE OF NEW YORK,
Rensselaer County, ss:

BARNEY SMITH, being duly sworn, deposes and says:

That he is a resident of the town of Hoosick, county of Rensselaer, and State of New York.

That for many years this deponent resided in the village of Hoosick, in the county of Rensselaer, as a neighbor of Patrick Dwyer, a brother of Johanna Callahan, who is the mother of Mary Mabel Rogers, who is now confined in the Windsor prison, in the State of Vermont, under sentence of death for the murder of her husband, Marcus Rogers.

Deponent further says that on or about the 17th day of March, 1886, near the village of Hoosick Falls, New York, the said Patrick Dwyer, while he (the said Patrick Dwyer), as this deponent is informed and believes, was temporarily insane, attempted suicide by cutting his throat. That this deponent assisted in watching and attending said Patrick Dwyer at his home after said attempt on his life.

Deponent further says that thereafter and on or about the 20th day of April, 1886, the said Patrick Dwyer, uncle of said Mary Mabel Rogers and brother of the mother of said Mary Mabel Rogers, was examined by Dr. J. C. Hannon, of Hoosick Falls, New York, and Dr. John H. Cipperly, of Troy, New York, and the said Patrick Dwyer was by each of the physicians declared to be an insane person, and by said examination, certified by said physicians above mentioned, the said Patrick Dwyer was, by an order made on the 20th day of April, 1886, by Edgar L. Fursman, Rensselaer County judge, committed to the Hudson River State Hospital, at Poughkeepsie, New York, as an insane person.

BARNEY SMITH.

56 Sworn to before me this 7th day of April, 1905.

CHAS. A. MCCARTHY,
Notary Public, Rens. Co., N. Y.

STATE OF NEW YORK,
Rensselaer County, ss:

TERESA SMITH, being duly sworn, deposes and says:

That she is a resident of the town of Hoosick, in the county of Rensselaer and State of New York.

That she has resided in the village of Hoosick, in the town of Hoosick, county of Rensselaer and State of New York, near the home of Mary Mabel Rogers, who, as this deponent is informed and believes, is now confined in Windsor prison, State of Vermont, under sentence of death for the murder of her husband, Marcus Rogers, and that this deponent has been intimately acquainted with the said Mary Mabel Rogers since her early childhood.

Deponent further says that she has frequently noticed that the said Mary Mabel Rogers acted strangely, and this deponent does not believe that the said Mary Mabel Rogers was at all times sound mentally.

Deponent further says that the said Mary Mabel Rogers was a person of low intelligence and was known to this deponent as a person at all times weak mentally.

TERESA SMITH.

Sworn to before me this 7th day of April, 1905.

CHAS. A. MCCARTHY,
Notary Public, Rens. Co., N. Y.

57 STATE OF NEW YORK,
Rensselaer County, ss:

LOUIS HAUSSLER, being duly sworn, deposes and says:

That he is a resident of the village of Hoosick Falls, county of Rensselaer and State of New York.

That he is engaged in the business of undertaker and funeral director in said village. That on or about the 13th day of August, 1902, he was employed by William Rogers to prepare for burial the body of his brother Marcus Rogers, who was alleged to have been murdered in the village of Bennington, Vermont, on or about August 12, 1902.

Deponent further says that while he was engaged in preparing the body of Marcus Rogers aforesaid for burial, at the residence of the said William Rogers in the town of Hoosick, New York, this deponent discovered a compound multiple depressed fracture of the skull on the back upper side of the skull, just over the ear.

Deponent further says that said fracture was not made after the body came into his charge for burial.

LOUIS HAUSSLER.

Sworn to before me this 6th day of April, 1905.

CHAS. A. MCCARTHY,
Notary Public, Rens. Co., N. Y.

58 STATE OF NEW YORK,
Rensselaer County.

JANE SMITH, being duly sworn, deposes and says:

That she is a resident of the town of Petersburg, county of Rensselaer and State of New York.

That for many years this deponent resided in the town of Hoosick, in said county of Rensselaer and State of New York, as a neighbor of Charles Bennett, father of Mary Mabel Rogers, who deponent is informed and believes is now confined in Windsor prison in the State of Vermont, under sentence of death for the murder of her husband, Marcus Rogers.

That at the time of the birth of the said Mary Mabel Rogers this deponent was in attendance upon her mother, Johanna Bennett, and assisted in nursing her during her confinement and helped care for the said mother for some time after the birth of said child.

Deponent further says, that during the time she was in attendance upon the said Johanna Bennett, that Charles Bennett, the husband of Johanna Bennett and the father of said Mary Mabel Rogers, acted strangely and violently at times, and apparently had an insane desire to do injury to his wife while she was in bed. That the said Charles Bennett frequently exclaimed in a loud manner and while in a violent temper, that he would kill the mother, and that if a child were born to him he would kill the same, and that during all this time his wife was in great fear that her husband would do her great bodily injury.

Deponent further says, that a few days after the birth of said Mary Mabel Rogers, this deponent while assisting in performing the housework heard the mother of Mary Mabel Rogers calling for aid,
59 saying that the father was trying to kill the child. This deponent then hastened into the bedroom in which the mother and child lay in bed and there found Charles Bennett, the father, trying to kill the child by smothering it with the bed clothes, which he was holding tightly over the face of the infant child; that this deponent and others who aided her forced Charles Bennett from the room.

Deponent further says that for several years before and after the birth of said Mary Mabel Rogers she frequently met and well knew the said Charles Bennett; that the said Charles Bennett was addicted to the use of alcoholic liquors; that he was of a low, depraved mentality and was weak intellectually was well known to this deponent.

Deponent further says that the said Charles Bennett frequently and at the slightest provocation flew into a violent passion, and at such times acted in an insane manner toward his wife and friends.

Deponent further says that said Charles Bennett was a degenerate; that his actions were those of a person of unsound mind, and this deponent firmly believes that the said Charles Bennett was a victim of moral insanity.

JANE SMITH.

Sworn to before me this 7th day of April, 1905.

CHAS. A. MCCARTHY,
Notary Public, Rens. Co., N. Y.

60 STATE OF NEW YORK,
Rensselaer County, ss:

WILLIAM BRANT, being duly sworn, deposes and says:

That he is a resident of the village of Hoosick, in the town of Hoosick, county of Rensselaer and State of New York, and has been a resident of said village for upwards of forty years.

That this deponent has known said Mary Mabel Rogers, confined in Windsor prison, State of Vermont, under sentence of death for the murder of her husband, Marcus Rogers, since her birth; and that this deponent well knew Charles Bennett, the father, and Johanna Bennett, the mother of said Mary Mabel Rogers. That the mother of said Mary Mabel Rogers is a woman of very low intelligence and mentally weak. That the father

of said Mary Mabel Rogers was addicted to the excessive use of alcoholic liquors, and while in a intoxicated condition and frequently at other times acted in a violent and abusive manner toward his family, and treated them most inhumanely. That said Charles Bennett possessed a low, depraved nature, was mentally weak, and was a moral degenerate.

That this deponent is informed and believes that the said Charles Bennett on several occasions after the birth of his child attempted to take the life of his infant child, the said Mary Mabel Rogers.

Deponent further says that the actions of said Charles Bennett were those of a person of unsound mind, and this deponent believes the said Charles Bennett was a person morally insane.

Deponent further says that he knew the said Mary Mabel Rogers from infancy until she grew to womanhood, and that he frequently
61 observed that she had many of the characteristics possess' by her father and mother. That she was as a child possessed at times of an ungovernable temper, impulsive, and apparently incapable of acting and behaving like other people; was of a very low intelligence and of a nervous disposition, excitable temperment, and a person very weak mentally, and was so generally considered by people who knew her.

WILLIAM BRANT.

Sworn to before me this 7th day of April, 1905.

CHAS. A. MCCARTHY,
Notary Public, Rens. Co., N. Y.

STATE OF NEW YORK,
Rensselaer County, ss:

LEROY D. MCWAYNE being duly sworn, deposes and says:

That he is a resident of the village of Hoosick Falls, Rensselaer County, New York.

That he has been a practicing physician for thirty years, and for twenty years last past has been in the practice of medicine in the village of Hoosick Falls, aforesaid.

That he was acquainted with the said Mary Mabel Rogers, who is now confined in Windsor prison, in the State of Vermont, under sentence of death for the murder of her husband, Marcus Rogers, having on many occasions for several years treated and prescribed medicine for her professionally previous to August 12, 1902, the day this deponent is informed said Marcus Rogers met his death.

Deponent further says that he well knew the said Marcus Rogers, husband of the said Mary Mabel Rogers.

Deponent further says that on or about August 7th, 1902, the said Marcus Rogers, husband of the said Mary Mabel Rogers, called at the office of this deponent in the village of Hoosick Falls, aforesaid,
62 and asked this deponent if Mary Mabel Rogers, his wife, has been calling upon him to consult him professionally. Upon this deponent answering him affirmatively, the said Marcus Rogers then informed this deponent that he expected his wife would soon call upon this deponent again, and, he then requested this deponent not to treat his wife, nor to give to her any medicine or any other drug she might call for. He, the said Marcus Rogers, then said to this deponent, the reason he made this request was that his wife, Mary Mabel Rogers, had of late

been acting strangely, and that he did not believe that she was of sound mind; that he feared that if she obtained any dangerous medicine or drugs she might do herself or some one else bodily injury.

Deponent further says that on Sunday, August 10th, 1902, a few days after the said Marcus Rogers had called at his office, the said Mary Mabel Rogers called at the office of this deponent and demanded that this deponent should prescribe for her certain drugs and medicines which this deponent knew to be dangerous. This deponent then observed that the said Mary Mabel Rogers was in a highly nervous mental state of mind and refused to prescribe for her or furnish to her the drugs and medicines desired.

Whereupon the said Mary Mabel Rogers flew into a violent passion, soundly berated this deponent for refusing her request, and threatened to kill this deponent if he did not prescribe for her as requested by her. This deponent then tried to reason with and calm her, and after calling for assistance and using much persuasion induced her to leave his private office and go in to his reception room, where this deponent had a long conversation with the said Mary Mabel Rogers, and where this deponent, in the presence of this deponent's wife, examined the said Mary Mabel Rogers as to her sanity and mental state. That after a careful
63 examination of the said Mary Mabel Rogers then and there had this deponent determined that the said Mary Mabel Rogers was then suffering with puerperal insanity.

This deponent further says that on said Sunday, August 10th, 1902, at the time said Mary Mabel Rogers called at this deponent's office, the said Mary Mabel Rogers was temporarily insane, caused, as this deponent believes, by pregnancy, in which condition she was at the time.

LEROY D. MCWAYNE, M. D.

Sworn to before me this 5th day of April, 1905.

CHAS. A. MCCARTHY,
Notary Public, Rens. Co., N. Y.

CHARLES W. PILGRIM, M. D.,
Poughkeepsie, N. Y., January 23, 1905.

To whom it may concern:

This is to certify that Patrick Dwyer was admitted to this institution from Hoosick, N. Y., on April 20, 1886, suffering from a form of insanity known as acute melancholia with suicidal tendencies; that he was discharged as improved on August 4, 1886.

Respectfully,

CHAS. W. PILGRIM,
Superintendent.

STATE OF NEW YORK,
County of Rensselaer, ss.

Physician's certificate of insanity under oath.

In the matter of the application of Patrick Dwyer, an alleged indigent lunatic.

I, John H. Cipperly, a permanent resident of Troy, N. Y., in the
64 county and State aforesaid, being a graduate of the University of the City of New York, an incorporated medical college, and having

practiced as a physician three years, do hereby certify, under oath, that on the twentieth (20th) day of April, 1886, I personally examined at Troy, N. Y., in said county, Patrick Dwyer, of the age of about 33 years, married, alleged to be insane, and by occupation a laborer, and I certify after such personal examination, that the said Patrick Dwyer is insane and a proper person for care and treatment under the provisions of chapter 446 of the laws of 1874.

I further certify that I have formed this opinion upon the following grounds, viz: He says his life is not worth living; that himself and family would be better off if he were out of the world. In view of this he has already attempted suicide by cutting his throat, has threatened the lives of his children, takes no interest in his surroundings, and remains inactive nearly all the time.

And I further declare that my qualifications as a medical examiner in lunacy have been duly attested and certified by Hon. E. L. Fursman, county judge of Rensselaer County.

(Signed) JOHN H. CIPPERLY, M. D.

Subscribed and sworn to before me this 20th day of April, 1886.

(Signed) WM. NORTH,
Notary Public, Rensselaer Co., N. Y.

I hereby certify that this is a correct copy of the original.

CHAS. W. PILGRIM,
Supt. H. T. S. Hospital.

Judge's certificate of qualification of physician and approval of his certificate.

STATE OF NEW YORK,
County of Rensselaer ss:

65 I hereby certify that Dr. John H. Cipperly, of Troy, N. Y., is known to me to be a reputable physician and possessed of the qualifications required by chapter 446 of the laws of 1874 to authorize him to give a legal certificate of insanity, and that I approve the aforesaid certificate made by him.

(Signed) E. L. FURSMAN,
County Judge of Rensselaer County.

STATE OF NEW YORK,
County of Rensselaer, ss:

Physician's certificate of insanity under oath.

In the matter of the application of Patrick Dwyer, an alleged indigent lunatic.

I, J. C. Harmon, a permanent resident of the town of Hoosick, in the county and State aforesaid, being a graduate of Medical University of New York, an incorporated medical college, and having practiced as a physician three years, do hereby certify, under oath, that on the twentieth (20th) day of April, 1886, I personally examined at Hoosick Falls, in said county, Patrick Dwyer, of the age of about 33 years, married, alleged to be insane, and by occupation a laborer; and I certify after such per-

sonal examination that the said Patrick Dwyer is insane and a proper person for care and treatment under the provisions of chapter 446 of the laws of 1874.

I further certify that I have formed this opinion upon the following grounds, viz: Attempted suicide by cutting his throat; illusions, despondency, threatening himself or somebody else; aversion to his children, etc.

He is moreover under the impression that he has lost his manhood
66 and wants agents to reestablish his capacity for sustaining his marital relations, etc., etc.

And I further declare that my qualifications as a medical examiner in lunacy have been duly attested and certified by Hon. E. L. Fursman, county judge of Rensselaer County.

(Signed) J. C. HARMON, M. D.

Subscribed and sworn to before me this 20th day of April, 1886.

(Signed) WM. NORTH,
Notary Public, Rensselaer Co. N. Y.

I hereby certify that this is a correct copy of the original.

CHAS. W. PILGRIM,
Supt. H. T. S. Hospital.

Judge's certificate of qualification of physician and approval of his certificate.

STATE OF NEW YORK,
County of Rensselaer, ss:

I hereby certify that J. C. Harmon, M. D., of Hoosick, is known to me to be a reputable physician, and possessed of the qualifications required by chapter 446 of the laws of 1874, to authorize him to give a legal certificate of insanity, and that I approve the aforesaid certificate made by him.

(Signed) E. L. FURSMAN,
County Judge of Rensselaer County.

67 STATE OF NEW YORK,
County of Rensselaer.

I hereby certify that this is a correct copy of the original.

CHAS. W. PILGRIM,
Supt. H. R. S. Hospital.

In the matter of the application of Patrick Dwyer, an alleged indigent lunatic.

Application having been made to me by T. J. Hurley, of the city of Troy, in the county of Rensselaer, for an examination into the mental state, condition, and indegence of Patrick Dwyer, of the town of Hoosick, in the county of Rensselaer, under the existing laws of the State of New York, in reference to lunatics and lunatic asylums, and having fully investigated the facts of the case, both in regard to the mental condition and pecuniary circumstances of the said Patrick Dwyer. And it satisfactorily appearing to me from such investigation, and the certificates of

two physicians under chapter 546, laws 1874, that said Patrick Dwyer is insane, and that he became so within one year prior to the date hereof, and that he is in indigent circumstances, but is not a pauper, and that he has no estate, either in possession or held in trust for him by any person, nor has he any property sufficient for the support of himself or his family, under the visitation of insanity aforesaid. And due and reasonable notice thereof, and of the time and place of hearing the same, to the acting superintendent of the poor of the county aforesaid, having been given, and due proof having been made thereof to me, I do therefore hereby order, adjudge and determine accordingly, and send, authorize and direct the admission of the said lunatic in and to the Hudson River State Hospital, at Poughkeepsie, N. Y., under and in pursuance of the laws of the State of New York.

68 In testimony whereof I have subscribed my name to this order and certificate, at the city of Troy, the 20th day of April, 1886.

(Signed) EDGAR L. FURSMAN,
County Judge of Rensselaer County.

STATE OF NEW YORK,
County of Rensselaer, Clerk's Office:

I, the undersigned, clerk of Rensselaer County, hereby certify that I have compared the annexed copy, order, and certificate with the original thereof filed in this office on the twenty-first day of April, 1886, and that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have set my hand and affixed the seal of said county this 21st day of April, 1886.

(Signed) SHEPARD TAPPEN,
Clerk of Rensselaer County.

Affidavit of Charles McCarthy.

I, Charles A. McCarthy, of Hoosick Falls, Rensselaer County, New York, on oath depose and say that I am an attorney at law in practice at Hoosick Falls, and have lived in said town and county about twenty years last past. In January, 1905, I, in company with others, undertook to assist in the work of procuring a new trial for Mabel Mary Rogers, now confined in the State prison at Windsor, Vermont, under sentence of death. I did so from motives of humanity and because I had long been acquainted with the said Mrs. Rogers and her family, and from my knowledge and acquaintance believe she was not responsible mentally; and I did not undertake the work with the expectation of pay for my services.

69

Soon after the reprieve was granted to Mrs. Rogers by Gov. Bell, I undertook the looking up of evidence with a view to procuring affidavits to be attached to a petition for a new trial. In this work I was necessarily, and without my fault, greatly delayed by the severity of the weather and the bad condition of the roads in the vicinity where the persons lived whose affidavits were necessary to be procured, and I was also delayed and embarrassed by lack of means to defray necessary expenses in and about this work, but I believe that I proceeded with all the diligence that could fairly be expected under the circumstances above set forth.

I further say that during the transaction of said work I secured the certificates of commitment of Patrick Dwyer in the Hudson River State Hospital for the Insane, and the other papers relating to the insanity and commitment of said Patrick Dwyer, and that said papers are authentic and can be legally and properly verified, as well as the fact of the insanity of said Dwyer on the hearing. Said Dwyer was a brother of the mother of said Mary Mabel Rogers.

In March, 1905, while engaged in the prosecution of the work of preparing affidavits, as above stated, I learned from Dr. Le Roy McWayne that he had knowledge of the facts which are more fully set forth in the affidavit signed by him and attached to the petition in this case, and I drew up said affidavit in accordance with the facts as he gave them to me, but before I was able to prepare and present it to him for signature he was taken ill with pneumonia. I waited a long time while Dr. McWayne was very seriously ill, and he finally executed the affidavit at a time when, although he was entirely conscious and fully understood and realized what he was doing, yet his condition was such that
70 he was not expected to recover. Since the execution of said affidavit, which was done on the day when the execution bears date, I learn that said McWayne is somewhat improved and that there is now some prospect of his ultimate recovery, but I say on information and belief that he will be wholly unable to testify as a witness for several weeks to come under the most favorable conditions, and I expect to procure and to attach hereto the proper affidavits of the attending physician or physicians to that effect.

I further say that I have been greatly embarrassed in the work of procuring affidavits by the opposition of an aunt of said Mrs. Rogers, who is bitterly opposed to any proof of insanity in her family.

I have encountered many overt acts of hostility and hinderance in the work aforesaid, evidently caused by the efforts of said aunt, and much delay and difficulty has been occasioned thereby.

I further say that the fact of insanity in the family of the mother of said Mabel Mary Rogers, and probably the fact of the insanity of the father of said Mabel Mary Rogers can be abundantly proven by the evidence not only of the witnesses whose affidavits I have procured and attached to this petition, but also by the evidence of a large number of other witnesses, and that likewise the fact that said Mabel Mary Rogers was of weak mind, dull and stupid, and far below the normal mental development, can be proved in like manner, not only by witnesses whose affidavits are attached, but by many others; that substantially all of said witnesses, who number from 20 to 30, live in the State of New York, and that I understand and believe that their attendance in the State of Vermont upon such a cause as this, viz, a petition for a new trial, can not be compelled by legal process, and that the only means of getting their testimony would be the appointment of a commission by the court hearing the cause with authority to sit and take testimony in the State of New York, and that thereupon under the laws of New York a sub-
71 pœna can be secured. Many of the witnesses whose testimony is important, and even essential, in my opinion, will not testify unless legally subpœned, and this situation is largely due to the opposition which I have encountered as above described.

I therefore say that it is essential to a proper hearing of the petition, that a commission be issued from the Supreme Court of the State of Vermont, or from some of the judges of said court if individual judges have such authority.

I further say that I have not at hand the means that would be requisite and necessary to defray the legal expenses of such witnesses if they had to come to Vermont, although I firmly believe that by the contributions of charitable persons sufficient funds can be raised in the near future to defray such necessary expenses of witnesses for attendance before a commission in New York.

CHAS. A. McCARTHY.

Sworn to before me this 18th day of April, 1905.

JAMES S. SCOTT,
Notary Public, Rens. Co., N. Y.

STATE OF NEW YORK,
Rensselaer County, ss:

WILLIAM P. HAYNES being duly sworn deposes and says:

That he is a resident of the village of Hoosick Falls, county of Rensselaer and State of New York.

Deponent further says, that he is the town clerk of the town of Hoosick, in said county and State aforesaid, and as such officer has charge of the records of vital statistics in said town.

That he has searched the records of said town for a record of the birth and also of the marriage of Mary Mabel Rogers, who deponent
72 is informed and believes is now confined in Windsor prison in the State of Vermont under sentence of death for the murder of her husband, Marcus Rogers, and that this deponent has been unable to find any record of the birth of said Mary Mabel Rogers in the town records of the town of Hoosick.

Deponent further says that the certificate hereto attached is a true and correct copy of the record of the marriage of the said Mary Mabel Rogers now on file in the office of the clerk of the town of Hoosick, county of Rensselaer and State of New York.

W. P. HAYNES, *Town Clerk.*

Sworn to before me this 18th day of April, 1905.

CHAS. A. McCARTHY,
Notary Public, Rens. Co., N. Y.

Town of Hoosick, village of Hoosick Falls.

Certificate and record of marriage.

Registered No. 442.

I hereby certify that Marcus Merritt Rogers and Mary Mabel Bennett were joined in marriage by me, in accordance with the laws of the State of New York, at Hoosick this 18th day of Dec., 1898.

(Signature of person performing the ceremony.)

Rev. E. D. TIBBITS.

Residence, Hoosick.

Groom's full name, Marcus Merritt Rogers.

Residence of groom, Hoosick.
Age, 28.
Color, W.
Occupation, farmer.
Single or widowed, S.
Birthplace of groom, Petersburgh, N. Y.
Father's name, James Rogers.
Mother's maiden name, Alice Philpot.
Number of groom's marriage, 1.
73 Bride's full name, Mary Mabel Bennett.
Residence of bride, Hoosick.
Age, 18.
Color, W.
Single or widowed, S.
Birthplace of bride, Hoosick, N. Y.
Father's name, Charles Bennett.
Mother's maiden name, Josie Dwyer.
Number bride's marriage, 1.

STATE OF NEW YORK,
Rensselaer County, ss:

GEORGE M. LAMB, being duly sworn, deposes and says:

That he is a resident of, and a practicing physician of the village of Hoosick Falls, Rensselaer County, New York. That he was on or about the 1st day of October, 1880, duly licensed to practice *to practice* medicine in the State of New York, since which time he has been engaged in the practice of medicine in the village of Hoosick Falls aforesaid.

Deponent further says that Doctor Leroy D. McWayne of the village of Hoosick Falls is now, and has been for two months, confined to his bed with bronchial pneumonia. That this leponent has frequently, during the illness of said Doctor McWayne, been in attendance upon said Doctor McWayne professionally.

Deponent further says that he believes the said Doctor Leroy D. McWayne is slowly convalescing, and that he will ultimately recover from his illness.

Deponent further says that said Doctor Leroy D. McWayne will not be able to attend court or testify in any proceedings for at least two months, on account of serious illness through which he is passing and his general debilitated condition.

Deponent further says that he has well known Doctor Leroy D.
74 McWayne for upwards to twenty years, and that the said Doctor Leroy McWayne is a person highly respected, a reputable physician, and a physician of high professional standing, and when not restrained by illness from attending to his business, enjoys a large and lucrative practice.

GEORGE M. LAMB, M. D.

Sworn to before me this 18th day of April, 1905.

CHAS. A. MCCARTHY,
Notary Public, Rens. Co., N. Y.

STATE OF NEW YORK,
Rensselaer County, ss:

JOHANNA CALLAHAN, being duly sworn, deposes and says:

That she is a resident of the town of Hoosick, county of Rensselaer, and State of New York, and is the mother of Mary Mabel Rogers, who is now confined in Windsor prison, in the State of Vermont, under sentence of death for the murder of her husband, Marcus Rogers.

Deponent further says that said Mary Mabel Rogers was born in the town of Hoosick, county of Rensselaer, and State of New York, on the 9th day of March, 1883.

Mrs. JOHANNA CALLAHAN.

Sworn to before me this 18th day of April, 1905.

CHAS. A. McCARTHY,
Notary Public, Rens. Co., N. Y.

STATE OF NEW YORK,
Rensselaer County, ss:

JOHANNA CALLAHAN, being duly sworn, deposes and says:

That she is a resident of the town of Hoosick, county of Rensselaer, and State of New York; that she is the mother of Mary Mabel
75 Rogers, who is now confined in Windsor prison, State of Vermont, under sentence of death for the murder of her husband, Marcus Rogers, and that Charles Bennett, now deceased, was the husband of this deponent and father of Mary Mabel Rogers.

Deponent further says, that during all the time she lived with the said Charles Bennett, and from the date of her marriage to him, the said Charles Bennett was addicted to the use of alcoholic liquors, and that he frequently came home beastly intoxicated, and would severely beat, wound, and illtreat this deponent, and demand whatever money she had saved from her labors that he might obtain more liquor. That the said Charles Bennett seldom worked and failed to supply this deponent with food or clothing, nor did the said Charles Bennett at any time properly support or maintain this deponent.

That the said Charles Bennett would frequently be taken with a fit of violent anger, and at such times seemed to be possessed of an uncontrollable and morbid impulse to do this deponent or some other person violent injury, and at such times seemed to be without will power or reason. That her said husband was illiterate, was possessed of low, depraved nature, was morally a degenerate and was mentally weak.

Deponent further says, that for some time previous to the birth of her child, Mary Mabel Rogers, her husband became more venomous and insane in his actions towards her, frequently in a violent passion threatening to kill this deponent before her child should be born, saying to this deponent that he would surely kill her child as soon as it would be born. That on account of the violent and insane actions of her said husband this deponent was constantly in fear of her said life.

Deponent further says, that a few hours before the birth of her said child, her husband, in one of his insane moods and fits of violent passion, and while this deponent was seriously ill in bed, with the intention, this deponent believes, of carrying out his frequent threats to kill this depo-

nent, came into the room of this deponent where she was ill in
76 bed, barricaded the door from the inside and threatened her that he would kill her. That others who were present obtained an entrance to the room and induced her said husband to depart therefrom before he was able to do her injury.

Deponent further says, that a few days after the birth of her child, and while this deponent was yet ill in bed with her new-born babe, the said Charles Bennett came into the bedroom occupied by the deponent and her child, and that the said Charles Bennett, at the same time saying that he intended to kill the infant, made an effort to kill the child by smothering it with the bed clothes, which he held tightly over the face and head of the infant; that this deponent was unable to offer any resistance, but called loudly for help; that assistance came and her said husband was ejected from the room; that thereafter the said Charles Bennett, her husband, departed from her home, and she did not see him again for several months.

Deponent further says, that when her child, the said Mary Mabel Rogers, was about six months old, her husband, the said Charles Bennett, returned to her home at Hoosick, and representing to this deponent that he had obtained work and that he would treat her in a more humane manner thereafter, and that he would then be able to support her and her child, and after repeated intreaties and much persuasion induced this deponent to take her child and go with him to Utica, New York; and while they were in their room in the hotel where they were then stopping her husband, the said Charles Bennett, made several attempts to kill her said child by poisoning it with laudanum, and in one of these attempts nearly succeeded. That this deponent noticed the said Charles Bennett giving a dose of laudanum to her said child, and noticing that the child was in distress, immediately obtained the service of physicians, who after several hours' labor resuscitated the child and saved her life. That
the said Charles Bennett was arrested, and this deponent with
77 her child returned to her home at Hoosick, New York, with her sister, who, having learned of her trouble, came after her.

Mrs. JOHANNA CALLAHAN.

Sworn to before me this 18th day of April, 1905.

CHARLES A. MCCARTHY,
Notary Public, Rens. Co., N. Y.

Affidavit of James C. Reilly.

I, JAMES C. REILLY, of Rutland, in the county of Rutland and State of Vermont, on oath depose and say, that in August, 1902, I was assistant superintendent in charge of the office of the Metropolitan Life Insurance Company at Bennington; that Marcus Rogers had a policy for five hundred (500) dollars with said company of the kind known as industrial. On the morning after his body was discovered, his wife, Mabel Rogers, came to the office of the company bringing the policy and receipt book; she came in response to my request, as I had personally left a message for her the night before to come to my office the following morning and bring the policy and receipt book.

I was called as a witness at the trial, and I testified to all the foregoing facts, in response to questions which were put to me, excepting the fact that I had called upon Mrs. Rogers requesting her to come to my office with the policy and receipt book; no questions were asked of me on this latter subject, and I did not then tell of it solely because the inquiry was not made. I had no intention of concealing anything. Afterwards, I personally know from what I learned of the trial, that it appeared from my testimony, that Mrs. Rogers had come to my office without being sent for or asked to come, with the policy and receipt book, and that this circumstance was relied on as showing a motive and purpose for her crime. I had not thought of putting my testimony
78 in any shape to give any false impression, and I am satisfied that the circumstance which I have above related, viz, of my calling upon Mrs. Rogers to come to my office, if it had been known, would have given an entirely different meaning and color to the fact that she did come with the policy and receipt book for the purpose of collecting the insurance money.

Some time in the summer of 1902 I called on Mrs. Rogers and urged her to pay an overdue premium on this policy; she did not want to do so. I remarked that the policy would lapse, but she seemed indifferent in regard to that. I finally got her to write to her husband and to ask him to pay it. She agreed to do this, but upon my request, and after I had urged her to do so.

I now say, to the best of my recollection, but of this I am not positive, that the fact that she urged her husband or requested him to pay up the premium on this policy, was used as evidence against Mrs. Rogers on the trial, and without any explanation such as I have hereinabove give'. And further I say not.

Rutland, Vt., April 11th, 1905.

JAMES C. REILLY.

Subscribed and sworn to this 11th day of April, A. D. 1905.
Before me,

THOMAS W. MOLONEY, *Notary Public.*

I, E. G. HALL, M. D., of the city of Rutland, county of Rutland, and State of Vermont, on oath depose and say, that I am a practicing physician in the city of Rutland and have been so for seven years; that I attended Mrs. Rogers during her imprisonment at the House of Correction when she was delivered of a stillborn child, at, I should say, full term.

Date of birth was Dec. 16, 1902.

E. G. HALL,
79 *Physician to House of Correction.*

Subscribed and sworn to before me this 27th day of April, A. D. 1905.

EDWARD D. MAGUIRE,
Notary Public.

I, F. C. ARCHIBALD, of Manchester, State of Vermont, being first duly sworn, on oath depose and say, that I am a practicing attorney, residing in said Manchester; that I assisted Daniel A. Guiltinan, esq., assigned counsel, in the defense of Mary M. Rogers, now confined in the State prison at Windsor, Vt., under sentence of death; that I was

requested to assist in the trial of her case but a few hours before the commencement of her trial, and met her for the first time and talked with her the evening before the date of beginning the trial; that all knowledge I had of her and of the history of her family and of herself was acquired during said trial; that I gained no knowledge of insanity or mental weakness in her family or herself until several months after she was convicted of the crime of murdering her husband, Marcus Rogers, nor was it even intimated to me during the trial, either by herself or any other person, that there had been insanity in some members of her father's or mother's family; that my interviews with her and her actions during the progress of the trial convinced me that she was mentally weak, and very much below the average person in mental force. Of her condition of pregnancy at the time when her husband was killed I did learn during the trial. She was wholly without funds to procure the attendance of witnesses who might have testified to her mental condition, even if the facts as now claimed, respecting insanity in some of her immediate relatives, had been known to me at that time.

Dated at Manchester, Vt., this 26th day of April, 1905.

Before me,

W. H. ROBERTS, *Notary Public.*

80 I, DANIEL A. GUILTINAN, of Bennington, in the county of Bennington, and State of Vermont, on oath testify and say, that I am an attorney at law in practice at said Bennington; that at the June term, 1903, of Bennington County Court I was assigned by the court to defend one Mary M. Rogers, who, at said June term, 1903, of said court, was, by the grand jury of said county, indicted for the murder of her husband, Marcus Rogers, at Bennington, in said county, during the month of August, 1902; that the said Mary M. Rogers was put on trial on said charge at the December term, 1903, of said Bennington County Court, and I, with Frank C. Archibald, attorney, of Manchester, in said county, conducted the defense of said respondent, Mary M. Rogers; that the said respondent, Mary M. Rogers, was found guilty of murder in the first degree and sentenced to be executed on the third day of April, A. D. 1905; that at the time of said trial I did not know and had not heard that the said Mary M. Rogers was or ever had been insane; that I did not at said trial know and had not heard that either of the parents of the said Mary M. Rogers was then or ever had been insane or afflicted with insanity; that at the time of the said trial I did not know and had not heard that there was or ever had been a case of insanity among any of the relatives of the said Mary M. Rogers, and that insanity was not urged as a ground of defense in the trial of the said Mary M. Rogers at the said December term, 1903, of Bennington County Court.

DANIEL A. GUILTINAN.

STATE OF VERMONT,
Bennington County, ss:

At Bennington, in said county, on this twenty-ninth day of April, A. D. 1905, personally appeared Daniel A. Guiltinan and made oath to the truth of the foregoing affidavit by him subscribed.

Before me,

EDWARD L. BATES, *Notary Public.*

81 *Supplemental affidavit of F. C. Archibald.*

I, F. C. ARCHIBALD, of Manchester, in the county of Bennington, on oath depose and say, that at the time and before the trial of Mary Mabel Rogers I had no knowledge whatever of any evidence that would show that the skull of said Marcus Rogers was fractured at the time of the alleged murder, and I had no information whatever on the subject of any injury to the head of said Rogers, except what appears in the transcript of the testimony, which was, in substance, to the effect that the injury to the head was slight and could not be regarded as a cause of death.

I further say that I have examined the affidavit of James C. Reilly, and that the matters therein disclosed were not known to me at the time of said trial, and I did not know, and had no reason to believe, that said Reilly had in fact sent for and requested Mrs. Rogers to come to this office before she came.

I further say that said incident described in said Reilly's affidavit was an important factor in the proof of motive and premeditation on the part of the prosecution, and that I believe the matter that is disclosed by Mr. Reilly, if known at the time, would have modified and explained this incident so as to have made the same entirely innocent, whereas in fact it was a very important circumstance looking for the conviction of the respondent of murder in the first degree.

F. C. ARCHIBALD.

Subscribed and sworn to this 1st day of May, A. D. 1905.
Before me,

THOMAS W. MOLONEY, *Notary public.*

82 STATE OF VERMONT,
Bennington County, ss. Supreme Court:

I, Harry T. Cushman, clerk of the Supreme Court for the State of Vermont for the county of Bennington aforesaid, hereby certify the papers hereunto attached to show a true copy of the original affidavits of Wilson S. Lovell, E. W. Oakes, Edward B. Flinn, Mary A. Hayes, Charles W. Corcoran, Helen F. Corcoran, William Stinton, Barney Smith, Teresa Smith, Louis Haussler, Jane Smith, William Brant, Leroy D. McWayne, Charles McCarthy, William P. Haynes, George M. Lamb, Johanna Callahan, James C. Reilly, E. G. Hall, F. C. Archibald, and Daniel A. Guiltinan, of the record of the proceedings in the matter of Patrick Dwyer, and of the certificate of Charles W. Pilgrim, M. D., and of Shepard Tappen, clerk of the county of Rensselaer, and of the certificate and record of marriage of Marcus Merritt Rogers and Mary Mabel Bennett, all being attached to the petition for a new trial of the said Mary M. Rogers, filed in this court on the sixth day of May, 1905, as the same appear among the records and files of said Supreme Court now remaining in the office of the clerk of said court at Bennington, in the county of Bennington aforesaid.

In testimony whereof I have hereunto set my hand and attached the seal of said Supreme Court at Bennington, in said county of Bennington, this 24th day of July, anno Domini 1905.

[L. S.] HARRY T. CUSHMAN, *Clerk.*

83 UNITED STATES OF AMERICA.

To Henry H. Peck and Wilson S. Lovell, of the county of Windsor, and Clarke C. Fitts, attorney-general of the State of Vermont, of Brattleboro, in the county of Windham, greeting:

You, and each of you, are hereby cited and admonished to appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the District of Vermont, wherein Mary Mabel Rogers is appellant and Henry H. Peck and Wilson S. Lovell are respondents, to show cause, if any there be, why the judgment in said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

July 5, 1905.

HOYT H. WHEELER, *Judge.*

84 BRATTLEBORO, VERMONT, *July 5th, 1905.*

I hereby accept service of the within citation, waiving copy and formal service.

CLARKE C. FITTS,
Attorney-General of the State of Vermont.

(Indorsed:) United States District Court, District of Vermont. In re Mary Mabel Rogers, habeas corpus. Citation. Returned, service accepted, July 10th, 1905. Geo. E. Johnson, clerk.

85 UNITED STATES OF AMERICA,
District of Vermont.

I, Geo. E. Johnson, clerk of the District Court of the United States of America for the District of Vermont, in the Second Circuit, do hereby certify that the foregoing pages numbered from 1 to 84, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the matter of Mary Mabel Rogers, writ of habeas corpus, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of said court to be hereunto affixed at the city of Burlington, in said District of Vermont, in the Second Circuit, this 1st day of August, A. D. 1905, and of the Independence of the United States the one hundred and thirtieth.

[SEAL.] GEO. E. JOHNSON, *Clerk.*

86 (Indorsed:) United States District Court, District of Vermont. In the matter of Mary Mabel Rogers, habeas corpus. Transcript of record. Office of the clerk Supreme Court U. S. Received Aug. 3, 1905.

87 (Indorsement on cover:) File No. 19870. Vermont D. C. U. S. Term No. 368. Mary Mabel Rogers, appellant, vs. Henry H. Peck and Wilson S. Lovell. Filed August 7th, 1905. File No. 19870.

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